IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/687/2018 & 1160/2018

Reserved on: 29.08.2019
Pronounced on: 03.09.2019

OA No.21/687/2018

Between:

1. S. Jangaiah, aged about 60 years,
S/o. S. Muthaih, 1-72, Chowderpally,
K.V. Ranga Reddy District, Telangana – 501 509.

2. P. Vishnu, Aged about 60 years,
4-86, Gungal Gungal Indira Nagar,
K.V. Ranga Reddy District (T.S) – 501 506.

3. Chakali Ramulu, Aged about 60 years,
S/o. Mallaiah, 2-80, Chowderpally, Yacharam,
K.V. Ranga Reddy District (T.S) – 501 509.

4. Mangali Pentaiah, Aged about 60 years,
S/o. late Shri Gadala Narsaiah, 3-74,
Chowderpally, Yacharam,
K.V. Ranga Reddy District (T.S) – 501 509.

5. Kommu Chinna Yellamma, aged about 60 years,
W/o. Kommu Rosaiah,
Yacharam, K.V. Ranga Reddy District (TS) – 501509.

6. Kunti Muthamma, aged about 60 years,
W/o. Bugga Ramulu, 5-65, Gungal Indira Nagar,
K.V. Ranga Reddy District, (T.S) – 501509.

7. Kommu Buggamma, aged about 60 years,
W/o. Kommu Laxmaiah, Chowderpally,
K.V. Ranga Reddy District (T.S) – 501 509.

8. Y. Ramulamma, Aged about 60 years,
W/o. Y. Laxmaiah, Netaji Colony,
Champapet, Hyderabad – 500 079.

9. R. Swamy, Aged about 60 years,
S/o. R. Yadaiah, 2-6, Bacharam, Hayathnagar,
K.V. Ranga Reddy District, Hyderabad – 501505.

10. N. Yadaiah, aged about 60 years,
S/o. N. Gandaiah, 1-75, Thatti Annaram, Hayathnagar,
KV Ranga Reddy District, Hyderabad – 501505.

11. Jaitharam Anjaiah, S/o. (late) J. Maisaiah, 1-49A, Chowderpally, K.V. Ranga Reddy District, (TS) 501509.

12. Ayyavari Santhamma, aged about 62 years, W/o. (late) A. Tirupathaiah, 2-54, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

13. Kommu Ramulu, aged about 67 years, S/o. (Late) K. Venkaiah, 1-16/A, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

14. Sidhapuram Laxmaiah, aged about 63 years, W/o. (late) S. Sayanna, 1-20, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

15. Sanduri Pochamma, aged about 63 years, W/o. (late) S. Mankaiah, 1-96, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

16. V. Ramulamma, aged about 63 years, W/o. (late) V. Rama Kistaiah, 2-48, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

17. Lakmalla Pochamma, aged about 63 years, W/o. Ramulu, 1-108, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

18. Pasam Chenamma, aged about 62 years, W/o. P. Yellaiah, 3-102/A, Yacharam, K.V. Ranga Reddy District, (T.S.) 501509.

19. Goreti Laxmamma, aged about 65 years, Yacharam, K.V. Ranga Reddy District, (T.S.) 501509.

20. Begari Savithri, aged about 64 years, W/o.(late) B.Laxmaiah, 1-96/30, Tulekhurd, K.V. Ranga Reddy District, (T.S.) 501509.

21. Sanduri Jangamma, aged about 64 years, W/o.(late) Sanduri Laxmaiah, 1-38/A, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

22. Mamidi Ramulamma, aged about 61 years, W/o.(late) Mamidi Ramulu, 4-7-17, Khas Bagh, Hayathnagar, K.V. Ranga Reddy District, (T.S.) 501505.

23. Yacharam Achamma, aged about 67 years, W/o.(late) Y. Agaiah, 3-36, Chowderpally, K.V. Ranga Reddy District, (T.S.) 501509.

… Applicants

And

1. Union of India, Rep. by its Secretary to Government of India,
Ministry of Agriculture & Farmers Development,
Krishi Bhawan, New Delhi – 110 001.

2. Indian Council for Agriculture Research,
Rep. by its Director General, Ministry of Agriculture &
Farmers Development, Krishi Bhawan, New Delhi – 110 001.

3. Central Research Institute for Dry Land Agriculture,
Rep. by its Director, Santosh Nagar, Saidabad (PO),
Hyderabad – 500 059.

… Respondents

OA No. 21/1160/2018

1. Gyara Sandamma, aged about 60 years,
W/o. G. Veeraiah, R/o. Subhodaya Nagar,
4-8-300/276, Hayath Nagar, RR District, TS-501505.

2. Chitamoni Yellamma, aged about 60 years,
W/o. Chitamoni Jangaiah, R/o. 4-5-62, Kammara Basti,
Hayath Nagar, RR District, TS-501505.

3. Mohammed Janmiya, aged about 60 years,
S/o.(late) Md. Khaseem, H.No.2-50/1, GSI, Tattiannaram,
Bandlaguda, KV RR District, TS-500068.

4. Boddupalli Eshwaramma, aged about 60 years,
W/o. B. Yadayya, R/o. 4-4-83,
Vinayak Nagar, Hayath Nagar, RR District, TS-501505.

… Applicants

And

1. Union of India, Rep. by its Secretary to Government of India,
Ministry of Agriculture & Farmers Development,
Krishi Bhawan, New Delhi – 110 001.

2. Indian Council for Agriculture Research,
Rep. by its Director General, Ministry of Agriculture &
Farmers Development, Krishi Bhawan, New Delhi – 110 001.

3. Central Research Institute for Dry Land Agriculture,
Rep. by its Director, Santosh Nagar, Saidabad (PO),
Hyderabad – 500 059.

… Respondents

Counsel for the Applicants … Mr. T. Koteswara Rao
Counsel for the Respondents … Mrs. C. Vani Reddy, SC for ICAR
(in both OAs)

CORAM:
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per B.V. Sudhakar, Member (Admn.) }

2. OAs are filed seeking regularisation of services of the applicants from 8.12.1988 along with consequential benefits. As the relief sought, cause of action and respondents being one and the same, a common order is issued.

3. Brief facts are that the applicants have retired from respondents organisation as temporary status casual labour. They have joined the respondents organisation in the years 1972 to 1984 and retired during the period 2011 to 2018. As per DOPT memo dated 10.9.1993, since the applicants were in service as on 1.9.1993, they were conferred temporary status. Applicants version is that respondents as per DOPT instructions on the subject, should have regularised the services of the applicants after grant of temporary status. Instead they have partially implemented the said direction favouring a few and not all. Applicants were those whose services were not regularised and hence denied terminal benefits other than gratuity. Aggrieved, OA has been filed.

4. The contentions of the applicants are that the DOPT OM dated 10.9.1993 was partially implemented ignoring the instructions in earlier DOPT OMs dated 7.6.1988 and 8.4.1991. According to these memos applicants were to be regularised as on 8.12.1988. The memos referred to have not been adjudicated upon and hence the issue is not res-integra. DOPT memos referred to, necessarily constitute subordinate legislation and have to be acted upon. Applicants claim that action as per the

observation of the Hon'ble Supreme Court in Secretary, State of Karnataka & Others vs. Uma Devi & Others in Appeal (Civil) 3595-3612 of 1999 case has not been taken. Applicants are surviving on the meagre pension of Rs.1000 granted by the State Govt. Not granting pension to the applicants is an infringement of Articles 14,16 & 21 of the Constitution. Hon'ble Apex Court judgments were relied upon by the applicants in support of their assertions.

5. Respondents oppose the contentions of the applicants by stating that Casual labourers were engaged on daily wage basis for doing farm/field work. Applicants who have been granted Temporary status were paid wages on par with Group D employees in the minimum of pay scale, leave and increments granted, services regularised subject to availability of vacancies, counted 50% of Temporary status service on regularisation to extend consequential benefits. In regard to casual labourers who have been conferred temporary status but not eligible for terminal benefits, they extended the benefit of gratuity under Payment of Gratuity Act, 1972. Service rendered before being conferred with temporary status was also reckoned in computing Gratuity. Besides, in regard to implementation of DOPT memo dated 7.6.1988, the issue was adjudicated upon in OA. No 406/1996 wherein it was directed vide order dated 1.1.1997 to confer temporary status to the applicants therein, as per OM dated 7.6.1988. Accordingly, temporary status was conferred w.e.f. 1.9.1993, not only to the applicants but to all others who were on the rolls, as per DOPT OM dated 10.9.1993, with consequential benefits, by adopting in 1997 the "Casual Labourers (Grant of Temporary status and

Regularisation) Scheme, 1993". Applicants have retired from service as Temporary status casual labourers, which, in fact, was conferred with retrospective date of 1.9.1993. Further, DOPT memo dated 8.4.1991 issued in continuation of OM dated 7.6.1988 has relaxed the condition of sponsorship by the Employment Exchange for regularisation. However, as per direction of this Tribunal in OA 406/1996, such relaxation has been allowed in granting temporary status to 138 casual labourers. Thus, respondents contend that the OMs dated 7.6.1988, 8.4.1991 and 10.9.1993 have all been implemented. In fact, services of 9 temporary status casual labourers were regularised as per DOPT Memo dated 10.9.1993 in view of the availability of the vacancies. Respondents insist that the Principles of Res judicata apply to the case since in different OAs filed by casual labourers of the respondents organisation, the issue raised in the instant OAs has been adjudicated. Therefore, the OAs deserve to be dismissed.

6. Heard both the counsel and perused pleadings on record.

7. I) Applicants retired from service as Temporary status casual labour. They have been paid Gratuity as per Payment of Gratuity Act 1972 at the time of retirement and other retirement benefits were not paid since their services were not regularised. Applicants heavily banked on DOPT Memo dated 7.6.1988 to further their cause. The salient features relevant to the applicants are as under:

i) Persons on daily wages should not be recruited for work of regular nature.

ii) Recruitment of daily wagers may be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.

iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised. If considered necessary.

iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/3oth of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

v) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

vi) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.

vii) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.

viii) All the administrative Ministries /Deptts. Should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved:-

a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.

c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

2. The following time limit for completing the review has been prescribed in respect of the various Ministries/Deptts:-

a) Ministry of Railways 2 Years

b) Department of Posts, Department of Telecommunications and Department of Defence Production 1 Year

c) All other Ministries / Deptts./Offices 6 months

3. By strict and meticulous observance of the guidelines by all Ministries/Deptts, it should be ensured that there is no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged above is duly completed.

II) Respondents have made it axiomatic that they have engaged the applicants in research projects for farm/field works which were casual/ seasonal/intermittent and not of full time in nature, for which regular posts cannot be created. However, minimum wages and leave, etc. for which the applicants were eligible as per the cited Memo were liberally granted. Ld. counsel for the applicants has harped on the aspect that they were continuously engaged for regular work till they retired and hence, respondents should have created regular posts to absorb them. In this regard, applicants relied on the Judgment of Hon'ble Apex Court in ***Nihal Singh & Ors v State of Punjab & Ors (2013) 14 SCC 65*** wherein it was held :

> *"20. .....*
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> *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.*
>
> *Xxxxxxx*
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> *35. ..... 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."*

In respect of the applicants, they were engaged for seasonal farm work and not for regular work. As the work was of transient nature, the need for creation of posts did not arise. Hence, there is no violation of the DOPT memo cited supra nor is the Hon'ble Supreme Court Judgment referred to, relevant.

III) With the advent of the DOPT memo dated 8.4.1991 and 10.9.1993, the applicants were granted temporary status. Respondents state that 9 of

the casual labour engaged have been regularised as per memo dated 10.9.1993. It is also observed that as per the directions of the Tribunal in OA 406/1996, along with the applicants other casual labourers engaged were also granted temporary status even though they did not approach the Tribunal for the said relief, by not insisting on the clause that the casual labour have to be sponsored by Employment Exchange to be granted temporary status. This is an indication that the respondents have been fair to the applicants and that they were acting as per rules and in accordance with law.

IV) Applicants have referred to the judgment of the Hon'ble Apex Court in Uma Devi case wherein it was held to regularise the services of the casual labour who have completed 10 years of service prior to the date of the Judgment on 10.4.2006 as a onetime measure. Respondents did regularise 9 of the eligible casual labour when the vacancies were available, in accordance with the Uma Devi verdict and as per DOPT OM dated 10.9.1993. In the case of the applicants, they could not, for lack of vacancies, till their retirement. Consequently, there is no infringement of the Uma Devi judgment.

V) Further, Ld Counsel for the respondents has emphatically stated that the Principle of res judicata applies to the present case since the issue was adjudicated in a number of OAs by this Tribunal involving casual labour working in various units of the respondents organisation. The OAs are 1174/2011, 1295/2011, 308/2012, 923/2012, 1110/2011, 1296/2011, 1310/2011, 62/2012, 369/2012, 370/2012, 1067/2012, 73/2013, and

86/2013. In OAs 1174/2011, 1295/2011, 308/2012 and 923/2012, it was held as under:

> *"11.....We are of the considered view that the respondents are implementing the OMs and circulars issued by the Government of India by regularising the casual labourers as per the recruitment rules and hence we feel that no orders are required to be passed in these OAs and we hope and trust that the respondents will regularise the applicants, who are in service and eligible as per the recruitment rules in accordance with rules. The respondents shall conclude the above direction/ observation as expeditiously as possible but not later than 3 months."*

Tribunal has thus observed that the OMs referred to by the applicants are being acted upon by the respondents. Hence the insistent claim of the Ld. Counsel for the applicants, that the Memo dated 7.6.1988 was not fully operated upon is not maintainable. Tribunal has also dealt with the very same issue in OA. No 406/1996 wherein it was directed vide order dated 1.1.1997 to confer temporary status to the applicants therein, as per Memo dated 7.6.1988. *De facto*, all the 23 applicants in the present OA, have figured in the OAs referred to above, as submitted by the respondents in a tabular form at page 7 of the reply statement. Hence, the Principle of res judicata does necessarily operate, since the issue in question was adjudicated by a Divisional Bench of the Tribunal in some of the OAs referred to and its findings as above are to be abided by in accordance with the directions of the Hon'ble Supreme Court in *S.I. Rooplal And Anr vs Lt. Governor Through Chief Secretary, Delhi & Ors, on 14 December, 1999 in Appeal (civil) 5363-64 of 1997.*

VI) Proceeding further with his submissions, Ld counsel for the applicants relied upon the observation of the Hon'ble Apex Court in ***P.L.Shah v Union of India and Anr, in CA No.38 of 1989, dated***

18.1.1989, reported in (1989) 1 SCC 546 to claim that the wrong done by not regularising their services which impacts pension, is a continuous cause of action and hence the clause of limitation does not apply in filing the OAs. As can be seen from the deliberations above, there is no wrong done to the applicants as respondents have followed the DOPT Memos and the law laid down on the subject. Hence the cited judgment is not relevant to the case. Nevertheless, in order not to jeopardise the cause of the applicants, OAs have been heard on merits without invoking the clause of limitation as apprehended by the applicants.

VII) Besides, Ld counsel has banked on the observations of the Hon'ble Apex Court in ***State of Bihar and Anr vs. Sachindra Narayan and Ors in CA No.884 of 2019 dated 30.1.2019, reported in (2019) 3 SCC 803,*** as under, to drive home the point that the legitimate expectations of the applicants in creating the posts as per Memo dated 7.6.1988 and regularising their services were not fulfilled:

> ***21.*** *In the judgment reported as Union of India v. Hindustan Development Corpn. (1993) 3 SCC 499], it was held that a pious hope even leading to moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. It was held: (SCC pp. 540 & 546-49, paras 28, 33 & 35)*
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> > *"28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.*
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> ***

33. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. ...

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35. ... It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case [Attorney General for New South Wales v. Quinn, (1990) 64 Aust LJR 327] : 'To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.' If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference."

As has been observed by the Hon'ble Apex Court the legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. In the present case, the expectations of the applicants in regard to their services gain legitimacy based on the conditions laid down in the

DOPT Memos discussed and as per law laid down in Uma Devi judgment. Respondents have followed the instructions in the DOPT memos cited and the Uma Devi judgment in granting temporary status and regularising the services of 9 casual labourers. Posts could not be created as per memo dated 7.6.1988 since the work was seasonal in nature. Without vacancies, there is no scope to regularise their services. Therefore, it cannot be said that applicants' legitimate expectations have been belied by the respondents by infringing DOPT memos under question or the Uma Devi judgment. The doctrine of legitimate expectation, can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. None of the conditions have been fulfilled in respect of the applicants.

VIII) In Uma Devi judgment, it was also held as under:

> *"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 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."

Applicants, in the instant case, were engaged as casual labourers on a daily wage basis and were not selected against sanctioned posts. There are no sanctioned posts to regularise the services of the applicants before retirement. Whenever, they were available, those eligible casual labourers numbering 9, have been regularised. It is important to note that to regularise the services of the casual labourers, constitutional requirements are to be met as per the constitutional scheme of things.

IX) It is not out of place that the Division Bench of the Tribunal in OAs 1110/2011 & batch has held as under:

10.....As such the question of regularisation in respect of retired employees does not arise.."

Applicants are all retired employees and hence regularisation of their services at this juncture is beyond the realm of reason. Applicants after being aware of these observations, approaching the Tribunal is surprising.

X) Going further, Ld. Counsel for the applicants has also cited the observations of the Hon'ble Supreme Court in *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries – (1993) 1 SCC 71 and Shayara Bano Vs. Union of India & Others, (2017) 9 SCC 1* as under, to emphasise the fact that the action of the respondents should not be arbitrary and that the legitimate expectations of the applicants are to be met.

Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries

> *"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.*
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> *8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."*

Shayara Bano Vs. Union of India & Others, (2017) 9 SCC 1

> *100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In Cellular Operators Association of India v. Telecom Regulatory Authority of India, (2016) 7 SCC 703, this Court referred to earlier precedents, and held:*
>
> > *"Violation of fundamental rights*
> >
> > *42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. (See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641: 1985 SCC (Tax) 121], SCC at p. 689, para 75.)*
> >
> > *43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304], this Court held: (SCC p. 314, para 13)*

"13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

44. Also, in Sharma Transport v. State of A.P. [(2002) 2 SCC 188], this Court held: (SCC pp. 203-04, para 25)

"25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly 390 arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

(emphasis in original)

101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such 391 legislation

would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14. "

The Ld. Counsel for the applicants has argued that the DOPT Memo dated 7.6.1988 issued under Article 309 of the Constitution is a subordinate legislation and hence its direction have to be followed. Otherwise, it would tantamount to arbitrary action on part of the respondents. In regard to the case on hand the applicants have been engaged for work of intermittent nature. DOPT memo dated 7.6.1988 speaks of creation of posts only if the work is of regular nature. Hence, the question of creation of posts to absorb the applicants does not arise. Moreover, in tune with the DOPT memos of 1991 and 1993 applicants have been granted temporary status. Respondents did also regularise the services of 9 eligible casual labourers working for the respondents as per DOPT memo 10.9.1993 and Uma Devi judgment. This Tribunal has observed in deciding OAs cited in paras supra that the respondents have been implementing the OMs and circulars issued by the Govt. of India in regard to the issue on hand. Hence, the action of the respondents cannot be termed as arbitrary by any stretch of imagination. On the contrary, legitimate expectations of the applicants for grant of temporary status and releasing gratuity, as per eligibility, has been met. Thus, from the above it is evident that the observations of the Supreme Court in the judgments cited supra have not been violated.

XI) To sum up, respondents have acted as per the stipulations laid down in DOPT memos dated 7.6.1988, 8.4.1991 and 10.9.1993 and as per the directions contained in the Uma Devi Judgment. The action of

respondents has been fair and reasonable. Legitimate expectations of the applicants have been met within the ambit of rules laid down in the relevant OMs and as per law. In fact, the issue raised by the applicants does attract the Principle of res judicata since it was adjudicated by this Tribunal in a series of OAs filed before this Tribunal by the applicants.

XII) Consequently, in view of the aforementioned circumstances, Tribunal does not find any merit in the OAs filed. Therefore they are dismissed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 3rd day of September, 2019

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