

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/180/2018

Date of Order: 18.07.2019

Between:

Sri Kanakadurgaiah
S/o Desaiah
Aged 40 years, working as Casual Labour
O/o Accounts officer (Cash)
General Manager, BSNL, Tirupathi,
Chitoor District. ... Applicant

AND

1. Union of India, Rep. by Secretary
Ministry of Communications
Government of India,
New Delhi.

2. The Chairman & Managing Director
Corporate Office, BSNL, Statemen House
Bharakamba Road, New Delhi.

3. The Chief General Manager
BSNL, Doorsanchar Bhavan, Abids, Hyderabad.

4. The General Manager
Telecom District, BSNL
Tirupathi, Chitoor District.

5. The Accounts Officer (Cash)
GMTD, BSNL, Tirupathi, Chitoor District.
[R-5 Is not necessary to this OA] ... Respondents

Counsel for the Applicant ... Mr. Krishna Devan.

Counsel for the Respondents ... Mrs. K.Rajitha, Sr.CGSC for R1
Mr.M.C. Jacob,CGSC for 2 to 5

CORAM:

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

ORDER

2. The OA has been filed for grant of temporary status.

3. Brief facts of the case are that the applicant is working as Casual Labour in the respondents organisation from 5.8.1988. As per Circulars issued by the respondents dated 17.11.1989, 14.8.1998 and 16.9.1999,

part time casual labourer is eligible for grant of temporary status by conversion from part time casual labourer into full time casual labourer subject to certain conditions. The benefit in terms of the circulars cited, being denied, filed OA 1636/2001 wherein it was directed to consider the case of the applicant in terms of the Circulars dated 16.9.1999 and 29.9.2000. Accordingly, by order dated 4.8.2003, the services of the applicant were converted into full time casual labourer. In regard to regularisation, the names of the eligible candidates were forwarded to the Corporate Office at Delhi in April 2008 which was kept pending. Hence, applicant filed OA 578/2010 wherein respondents were directed to dispose of the representation of the applicant. Respondents complied with the direction by rejecting the representation on 23.5.2011 whereas others who were similarly placed were given temporary status and services regularised. Applicant made several representations on 29.12.2012, 15.6.2015 but of no avail and, hence, the OA.

4. The contentions of the applicant are that as per Circulars dated 14.8.1998 and 16.9.1999 applicant is entitled to be granted temporary status but it was denied. In fact 3rd respondent based on Circular dated 29.9.2000 has regularised vide orders dated 5.10.2001 the services of casual labourer who worked for 4 hours and even less than 4 hours but the 4th respondent did not do so. Based on the orders of this Tribunal in OA 1636/2001, applicant's services were converted into full time casual labour on 4.8.2003. Thereafter, on completion of 240 days as per circulars dated 14.8.1998 & 29.9.2000 applicant has to be granted temporary status and services regularised. The orders of the Tribunal dated 28.6.2001 were not fully complied with. Juniors, namely, Mr.Muniraja was granted temporary status on 19.11.2003 and Mr.K. Yasanulla w.e.f 19.6.2004 by the 4th

respondent but not for the applicant. The 3rd respondent, vide order dated 1.8.2002, has also identified the applicant as the only employee left out for grant of temporary status. Applicant is fully eligible to be granted temporary status as per Circular dated 29.9.2000. Respondents have granted temporary status to Sri M. Subba Rao, Sri Bhaskar, Smt Rukmini and others working in electrical division in 2005 and to Sri S.V. Chandra Shekar, Sri Chinna Babu in 2012 whereas despite directions of the Tribunal on 3.10.1997 & 28.6.2001 temporary status was not granted to him. Therefore, applicant has been discriminated. Respondents are distinguishing casual labourers, who have gone to the Tribunal and those who did not by favouring the later. The applicant is eligible for grant of temporary status atleast from Aug 2004, and for temporary status, availability of vacancy is not required.

5. Respondents inform that the applicant was initially engaged against norms and consequent to an Audit observation, he was disengaged on 1.9.1997. Challenging the disengagement, applicant with some others, filed OA 1329/1997 wherein it was directed that on making a representation, respondents to dispose of the same if applicants were working on date. The said condition that if the applicants were working on the said date was challenged in WP No.4492/99 in Hon'ble High Court wherein the said condition was set aside. The representation submitted by the applicant was rejected on the ground that temporary status can be granted only to full time casual labourer and not to the part time casual labourer, like the applicant. Applicant was converted into full time casual labourer on 4.8.2003 along with other similarly situated employees. Thereafter, applicant has filed OA 578 of 2010 for regularisation as per Scheme dated 7.11.1989 & DOT letter dated 29.9.2000 and as per the directions of the

Tribunal, representation of the applicant was examined and rejected vide order dated 30.6.2011 on the ground that he is not covered under rules for temporary status as he was only a part time casual labourer till 4.8.2003. Besides, as per Hon'ble Supreme Court verdict in **Umadevi**, prohibits schemes to be operated without following the procedure prescribed for appointment in public employment. The appointment of the applicant is illegal and this comes under the purview of **Umadevi** verdict. DOT launched a scheme for grant of temporary status and regularisation of casual labourers employed by proceeding dated 7.11.1989 with the cut off date as 30.3.1985 and thereafter the cut off date was extended to 22.6.1998 and 12.2.1999 with the conditions that the casual labourer should have been engaged as on 1.8.1998, rendered 240 days of service, 10 years of service as on 31.3.1997 and grant of TSM as per DOT as per letter dated 9.6.2000. All the schemes are applicable to full time casual labourer and since the applicant was part time casual labourer he could not be considered under the scheme. By letters dated 16.9.1999/25.8.2000, DOT granted one time relaxation to convert part time casual labourer working for 4 or even less hours into full time casual labourer to the extent of shortage of Group `D' staff. Further, by letter dated 29.9.2000 DOT decided to regularise the services of part time/ full time casual labourers, casual labourers with temporary status and Ayas. The regularisation would be subject to availability of vacancies. Applicant was converted into full time casual labourer after the formation of BSNL on 4.8.2003, without sanction and not against any post. At present the applicant is not covered by any DOT scheme and that BSNL does not have any scheme to grant temporary status and regularisation of services. Respondents also state that Sri P.Muniraj services were regularised based on the orders of this Tribunal in

OA 1181/2001. The contention of the applicant that applicant is discriminated is incorrect, since 45 casual labourers were converted into full time casual labourers after the formation of BSNL. Such conversion has to be to the extent of vacancies and it was done without the approval of the competent authority. Applicant's contention that he should be granted temporary status after putting 240 days of service as full time casual labourer is contingent upon the availability of a vacancy. In regard to Electrical Division, it forms a separate Unit and that based on facts in the said cases they were granted the relief sought.

6. Heard both the counsel and perused the pleadings on record.
7. I) The case has a chequered history. Tracing the same would help in analysing the facts and arrive at the truth in its total splendour. To begin with the impugned order issued consequent to the directions of this Tribunal in OA 578/2001 states that the services of the applicant were converted from Part Time Casual labour to Full Time Casual Labour only on 4.8.2003 and, hence, he does not come under the ambit of the circulars dated 7.11.1989, 17.12.1993 & 12.2.1999. Further, as per the observation of Hon'ble Apex Court in **Secretary, Ministry of Communications & Ors v Sakkubai** [Civil Appeal No 360-361 of 1994, dated 2.4.1997], part time casual labourer are not eligible for grant of temporary status and according to Uma Devi judgment on 10.4.2006 the schemes for grant of temporary status and regularisation of services have become legally untenable. Uma Devi was reiterated in the later Judgment of the Hon'ble Supreme Court in **BSNL v Teja Singh** vide SLP (civil) No 7803 of 2006 dated 16.1.2009.

Against this background the case requires close study so that the realities which existed at different intervals of time are not glossed over.

The applicant aggrieved that he was not granted temporary status though his junior was granted moved this Tribunal in OA No.1636/2001 wherein it was directed on 25.02.2003, as under:

“5. In view of the above facts and circumstances, since it is not in dispute that the applicant is senior to the Respondent No.5 i.e., V. Chakradhar Kumar and it is also not in dispute that the Respondent No.5 has already been converted into full-time casual mazdoor and has also been conferred temporary status and since from the reply statement and the letter dated 03-09-2001 produced by the learned counsel for the applicants, it is clear that there are vacancies available in the department, I dispose of this application by directing the respondents to issue appropriate orders converting the applicant into full-time casual mazdoor and conferring on him temporary status within a period of one month from the date of communication of a copy of this order. Thereafter the respondents shall consider the case of the applicant for giving regular appointment as per rule.”

II) Thus from the above, it is crystal clear that since vacancies were available and that his junior was conferred temporary status, Tribunal on 28.2.2003, directed to convert the services of the applicant as Full time Casual Labour and grant temporary status to the applicant within a period of one month. Accordingly services of the applicant were converted as Full time casual labourer on 4.8.2003 and in regard to regularisation of his services, the case was forwarded to the Corporate Office of the respondents Organisation in 2008 where the issue was left unattended to. It can be observed that the order of the Tribunal was on 28.2.2003 to grant temporary status within a month since his junior was accorded similar status. Respondents partly complied with the order by making him a Full

Time Casual Labour after procrastinating the same for nearly 6 months. After a lapse of 5 years the issue was taken up with the Corporate Office for regularisation of his services in 2008 where it was kept in cold storage. Now the question is as to whose fault it is, in not taking a decision on the verdict of this Tribunal way back in 2003. Had the decision been taken in 2003, applicant being fully eligible as per prevalent schemes he would have been granted temporary status and services regularised. The judgments of **Uma Devi** and **Teja Singh** of 2006 and 2009 respectively, which were pronounced later would not have been applicable to the case. Therefore, there cannot be any iota of doubt that the delay was on part of the respondents in taking the decision for grant of temporary status and regularisation of services as per the directions of this Tribunal in OA 1636 in 2001. It was undoubtedly a mistake committed by the respondents in not acting upon the Tribunal order. Respondents had a choice either to implement it or contest it in a higher judicial forum which they did not. Reply does not contain any response as to why a decision was not taken despite the directions of the Tribunal in OA 1636/2001. The order of the Tribunal has attained finality as it remains uncontested. Respondents having not taken a decision promptly, taking the plea at this juncture of time that there were no vacancies to accommodate the applicant lacks substance. Thus, respondents are penalising the applicant for the mistake committed by them. This is not fair to say the least. There is inaction on part of the officers of the Respondents Organisation to act or contest the order of the Tribunal. They cannot be allowed to take advantage of their own mistake and conveniently quote the later judgments of the Hon'ble Supreme Court in the later years to deny the legitimate benefit which was extendable to the applicant. The mistake of the respondents should not recoil on to the

respondents. The Tribunal takes support of the Hon'ble Supreme Court in a catena of judgments, extracted hereunder, to make the above assertions.

(a) **A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust**, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) **Rekha Mukherjee v. Ashis Kumar Das**, (2005) 3 SCC 427 :

“36. The respondents herein cannot take advantage of their own mistake.”

(c) The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna** (C.A. No. 8208/01) held that the mistake of the department cannot be recoiled on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC** (C.A. No. 5883-5991 of 2007 decided on 13.12.2007), it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(d) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

(III) Besides, a court order which may be right or wrong have to be followed and implemented, otherwise, it would mean an end to the rule of law. If not implemented due to the inaction of the respondents, it would lead to chaos and confusion as is seen in the present case. In short, it will impair justice. Respondents have not contested the decision

of the Tribunal in OA 1636/2001 and, hence, the judgment has attained finality. In fact, respondents having not taken a decision in time are now confused as to whether they can go forward with the later judgments of Uma Devi and Teja Singh. True to speak respondents are liable for contempt. Tribunal relies on the observations of the Hon'ble Supreme Court, as under, in stating what has been stated above.

- a) The Commissioner, Karnataka ... vs C. Muddaiah on 7 September, 2007, Appeal (civil) 4108 of 2007:

“31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.”

- b) Director of Education v. Ved Prakash Joshi, (2005) 6 SCC

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“The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order..... **Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. (Emphasis supplied)**

c) In Jasbir Singh vs. Punjab & Sind Bank and Others : 2006

(11) SCALE 204 it was held:-

"7 The learned counsel for the respondent contended that the decision of this Court has no application. He may be right. But, it is not necessary for us to delve deep into the matter as we are of the opinion that the judgment in civil matter having attained finality, the same was binding on Respondent-Bank."

(IV) While the case of the applicant was gathering dust in the Corporate office, many other similarly situated employees were granted temporary status like Sri M. Subba Rao, Sri Bhaskar, Smt Rukmini and others working in Electrical Division in 2005 and to Sri S.V. Chandra Shekar, Sri Chinna Babu in 2012 whereas, despite the directions of the Tribunal on 3.10.1997 & 28.6.2001, temporary status was not granted. This is a case of clear discrimination. The reasoning given that the Electrical Division would have granted the relief as per certain norms is surprising, since Electrical Division too comes under the Respondents organisation and they cannot have a separate set of rules. Further, it is not explained as to how Uma Devi and Teja Singh have not come in the way of the respondents in granting temporary status and regularising the services of some similarly situated employees in 2012. Thus, there is bias in dealing with the request of the applicant for grant of temporary status.

Driven to the wall for not having granted temporary status applicant moved the Tribunal in OA 578/2010 seeking regularisation of services, being apprehensive that the Respondents may be antagonised if a contempt were to be filed for not complying with the orders of the Tribunal in OA 1636/2001. The applicant is a Casual Labour and he is clinging to the Respondents Organisation by a thin straw and, hence, he can only

plead but cannot take on a mighty respondents organisation like BSNL. The direction in this order was to dispose of the representation of the applicant which they did, by issuing impugned order dated 3.6.2011 and the infirmities contained in it have been brought out in elaborate terms in the above paras taking support of the Hon'ble Supreme Court observations on the relevant issues.

(V) Further, it is not out of place to state that the Respondents Organisation being an instrumentality of the State is expected to don the role of a model employer. Respondents are not expected to frustrate the claims of its employees. Applicant was eligible to be granted temporary status and regularisation as per series of circulars/schemes commencing from 1989 to 2000. Yet, his request for reasons, which are in-defendable, was negated. In fact, in the present case, junior to the applicant was granted temporary status and, hence, he moved the Tribunal in OA 1636 of 2001. Instead of granting temporary status on being directed, respondents converted his services into full time casual labour and thereby frustrating his legitimate claim. Legitimate since the verdict in OA 1636/2001 attained finality as it was not challenged in the superior judicial forums. Under the garb of disposal of representation of the applicant, as directed in OA 578/2010, respondents taking cover of the later judgments of Uma Devi and Teja Singh has made the hope of the applicant to end in despair. Respondents by thrusting their own mistake of inaction on to the applicant, is like playing chess with his request for granting temporary status and regularisation by citing developments later to the order of this Tribunal in OA No.1636/2001. Many of the juniors have been granted the relief sought whereas applicant has been discriminated despite

being eligible like his juniors, thereby creating an atmosphere of lack of trust. Tribunal takes support of the Hon'ble Supreme Court observation in **Secretary, State Of Karnataka And Others** vs. **Umadevi And Others** [(2006)4SCC1, as under, while making the aforesaid observation:

“53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.”

(VI) In regard to the argument made by the respondents in regard to Uma Devi an apt answer is found in the observations at para 8 & 10 of the Hon'ble Apex Court in **Narendra Kumar Tiwari & Ors Etc** v **The State of Jharkhand**, as under:

“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.

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10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.”

The applicant was irregularly appointed and, hence, was eligible for the relief sought even as per Uma Devi judgment. The contention of the respondents is that the applicant was illegally appointed since there were no vacancies does not hold water as it was the mistake of the respondents to issue the order and thereafter penalising the applicant for their mistake is impermissible. Besides, an identical issue was dealt by the Hon'ble High Court of A.P in Writ Appeal No.2560 of 2005 (**G.C.Reddapa Reddy & Others** v. **Union of India & Others**, decided on 9.10.2014), and relief of grant of regularisation of services was granted. The relevant portions are reproduced as under and based on the same, there is no need to further explain as to why the applicant in the present OA need to be extended the relief sought.

“For the past two decades, the appellants are pursuing the remedies before one forum or the other. In this regard, the appellants sought temporary status by filing O.A.No.471 of 2004. Though they were not successful in getting the benefit of conferment of temporary status, the order passed therein helped

them in continuing in service. While they were continuing in service, the Government virtually renewed the scheme, which was introduced in 1999 providing for conferment of temporary status on such of the casual employees who have completed 240 days of service. The cut off date is stipulated as 01.08.1998.

There is no denial of the fact that the appellants are continuing in service at least from the year 1998. Though there is some uncertainty in this behalf, the order passed by the Tribunal in O.A.No.601 of 2003 virtually puts an end to this. The Tribunal recognized the fact that the appellants are continuing in service, may be, as part-time casual labourers, and that they are otherwise entitled to temporary status. If the respondents were of the view that the order does not reflect the correct facts, they could have pursued the remedies *vis-a-vis* the said order. Once it has become final, the respondents cannot contradict the facts mentioned therein.

In its order in O.A.No.601 of 2003, the Tribunal specifically directed that the appellants shall be first converted into full time casual employees and then conferred with temporary status, and thereafter be regularised in services. None of the steps were taken. Certain basic facts are sought to be projected through the impugned order. The respondents cannot be permitted to plead those acts, which run contrary to the order passed in O.A.No.601 of 2003. The plea of the appellants that the employees similarly situated as they in the other districts of the State of the Andhra Pradesh have been conferred with the temporary status and they were regularised in service, remains un rebutted. In fact, that is admitted in the counter affidavit itself. Therefore, we are of the view that the appellants are entitled to be extended the benefit, may be with effect from different dates.

Therefore, we allow the writ appeal and set aside the order passed by the learned Single Judge. The writ petition is allowed by setting aside the order, dated 29.06.2004. We direct that the appellants shall be deemed to have been converted from part time casual labourers to full time casual labourers and then conferred with temporary status, from 30.06.2004. They shall also be deemed to have been regularised with effect from 01.07.2007. However, they shall not be entitled to any arrears of salary on account of such measures. They shall be paid salary as regular employees with effect from 01.11.2014.”

(VII) Respondents have cited the Hon'ble Supreme Court in **Upendra Singh v State of Bihar and ors** in C.A.No.2356 of 2018. The same is not relevant to the case as the Respondents are not permitted under law to thrust their mistake on to the applicant as per observations of the Hon'ble Apex Court in the judgments cited supra. Besides, the verdict of the Hon'ble High Court of Kerala in OP (CAT) No 3103 of 2012 (z) is also not relevant since it was about reduction of working hours from 8hrs to 4hrs and thereafter denying regularising the services. Moreover, the observation of the Hon'ble Apex Court in Narender Kumar Tiwari cited supra explains as to how Uma Devi is applicable to the instant case. The case of the applicant is well covered by the observations of the Hon'ble Apex Court in Narender Kumari Tiwari case, dated 1.8.2018.

(VIII) To conclude, respondents have not acted as per their own rules in time, tried to thrust their own mistake on to the applicant, direction of the Tribunal in OA 1636/2001 has not been implemented in letter and spirit, took cover of the later developments which in all fairness should not be made applicable to the applicant's case, discriminated the applicant by providing relief to his juniors but not to him albeit eligible and did not discharge the responsibility of a model employer. The action of the respondents was not in resonance with the judgments of the superior judicial forums cited supra.

(IX) Therefore, in view of the above infirmities the action of the respondents is against rules, arbitrary and illegal. Hence, the impugned order dated 30.6.2011 is quashed. Consequently, respondents are directed as under:

- i) To grant temporary status to the applicant and thereupon regularise his services from the date his immediate junior has been granted similar relief.
- ii) Salary to be fixed on a notional basis on regularisation as per the due date stated at (i) above and disbursed.
- iii) No arrears of salary to be paid from the date of regularisation.
- iv) Time Calendared to implement the order is 3 months from the date of receipt of this order.
- v) No order as to costs.

With the above directions the OA is allowed.

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

Dated, the 18th day of July, 2019

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