

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00858/2017

Friday, this the 28th day of June, 2019

CORAM:

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

Jameela M.K.,
Aged 50 years,
D/o Kasim,
Cook-Cum-Ayah,
Government Nursery School,
Kalpeni Island,
Residing at Moosakakada House,
Kalpeni Island,
UT of Lakshadweep.

(By Advocate Mr.P.V.Mohanan)

Versus

1. The Administrator,
Lakshadweep Administration,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. The Director of Education,
Administration of the Union
Territory of Lakshadweep,
Kavaratti – 682 555.

(By Advocate Mr.S.Manu, for Respondents)

This application having been heard on 24th June, 2019, the Tribunal on 28th June, 2019 delivered the following :

.2.

ORDER

OA No.858/2017 is filed by Smt. Jameela, working as Cook-Cum-Ayah on contract basis at Government Nursery School, Kalpeni, against non-consideration by the respondents to regularize her services as Cook . The relief sought in the OA are as follows:

- i. To direct the respondents to regularize/absorb the applicant as Cook in the scale of pay of Rs.5200-20500/- + Grade Pay Rs.1800/- with all consequential benefits including arrears of pay.
 - ii Any other appropriate order or directions as this Hon'ble Tribunal deem fit in the interest of justice.
2. The applicant belongs to Scheduled Tribe Community, was appointed as Cook-Cum-Ayah at Government Nursery School, Kalpeni on contract basis vide order dated 16.10.1998 on a consolidated remuneration of Rs.1350/- (Annexure A1). She had been continuously engaged as Cook-Cum-Ayah till date with a short break after Ramzan holidays. The applicant joined service with effect from 27.10.1998 and was included in category A (Skilled) under Education Department, as per the direction of the Director of Panchayat (Annexure A3). The applicant had submitted a representation seeking regularisation on the ground that she had completed more than 19 years of service (Annexure A4). The Principal, Government Senior Secondary School, Kalpeni had recommended the applicant for absorption as Cook (Annexure A5).

3. The procedure of absorption was that those casual labourers who had been working for a period of two years after registering their name in the Employment Exchange will be absorbed, failing which the post will be filled by direct recruitment. Following this procedure the respondents absorbed the incumbents engaged as Cook in the year 1995 and 1996. The VIth Central Pay Commission had recommended minimum qualification of 10th standard for direct recruitment to the post of Multi Skilled Labour. The first respondent framed the Recruitment Rules , 2010 for the post and fixed the educational qualification as Matriculation or equivalent with 50% weightage of matriculation and 50% weightage in cooking.

4. It is submitted that similarly engaged Cooks in the year 1997, 1998 and 1999 had filed Original Applications before this Tribunal seeking a direction for regularisation and the same was disposed of with a direction to consider their case for regularisation prior to introduction of new Recruitment Rules. Aggrieved by the order of this Tribunal, the respondents filed an appeal before the High Court of Kerala. The High court disposed of the case with a direction to the administration to decide the matter in terms of the judgment of **Hon'ble Supreme Court in Karnataka v. Uma Devi (2006) 4 SCC** dated 10.04.2006. In purported implementation of the order of the High Court, the respondents rejected the claim for regularization of applicants therein (Annexure A10). Aggrieved by the Annexure A10 order the applicants filed

.4.

OA No.23/2013 and the OA was allowed by this Tribunal setting aside Annexure A10 and declaring that the applicants who had been working as casual workers for more than 15 years are entitled for regularisation. The Tribunal also directed the respondents to consider the case of the applicants for regularisation in the same manner as was done in 2007 for other casual labourers in the seniority list for the available vacancies as well as all future vacancies that may arise in due course. As per the directions, the respondents regularised the services of the applicants in OA No.23/2013. Admittedly, the beneficiaries of OA No.23/2013 commenced service in the year 1998. The applicant has submitted a representation claiming absorption in the light of the above order of this Tribunal.

5. As grounds, it is submitted that the applicant was working in the sanctioned post from 1998 onwards and is entitled for regularisation. The applicant claims that as per the judgment in **Umadevi's** case, she is eligible to be absorbed as Cook.

6. The respondents have filed reply statement disputing the contentions raised in the OA. They admit that the applicant was appointed on contract basis as per order dated 16.10.1998. It is also submitted that the applicant will not come within the norms for regularisation because she had not rendered 240 days continuous service as on 10.09.1993 as per DOP&T order dated 10.09.1993. As per the recommendation of the 6th Central Pay

Commission, the minimum educational qualification required is matriculation for direct recruitment to the post of Multi Skilled Labourer. Before recommendation of 6th Central Pay Commission, the respondents followed a procedure of absorbing those casual labourers who have worked for more than 2 years and who have already registered their names in the Employment Exchange. On implementation of the 6th Central Pay Commission the respondents amended the Recruitment Rules for the post of Cooks prescribing minimum qualification as matriculation or its equivalent. Therefore, the respondents submit that the applicant cannot be appointed as Cook, since she is not having the minimum required qualification for the post.

7. We have heard Shri P. V. Mohanan appearing on behalf of the applicant and Shri S.Manu for Lakshadweep Administration. The contention of the applicant is that she had been first engaged in the year 1998 during the Ramzan holidays and has been employed as a casual employee ever since with breaks after every 89 days. She has not produced any documentary evidence to show that she was engaged as Cook on a continuous basis. In fact, as per Annexure A5 which is issued by the Principal recommending her case, it is clearly stated that she was engaged as a Cook in the leave vacancy of the regular Cook. She was not found eligible in terms of **Uma Devi** judgment. She was also found not fit for relaxation under the extant Recruitment Rules.

.6.

8. On a consideration of the above, we conclude that the OA lacks merit and is liable to be dismissed. We do so. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures

- | | |
|--------------|---|
| Annexure A1 | - True copy of the order F.No.6/14/98-Edn dated 16.10.98 issued by the 2 nd respondent |
| Annexure A2 | - True copy of the proceeding F.No.6/14/98-Edn dated 7.6.1999 issued by the 2 nd respondent |
| Annexure A3 | - True copy of the circular F.No.1/2/2012-Edn/(DP)/Estt dated 8.8.2013 issued by the Senior Administrative Officer Education (District Panchayat) |
| Annexure A4 | - True copy of the representation |
| Annexure A5 | - True copy of the recommendation F.No.02/03/2017-Dr.KKMK GSSS (Klp)/498 dated 25.7.2017 issued by the (C.P Subaidabi), Principal |
| Annexure A6 | - True copy of the proceeding F.No.6/19/2000-Edn (Estt) dated 1.11.2007 issued by the 2 nd respondent |
| Annexure A7 | - True copy of the proceeding F.No.6/19/2000-Edn(Estt.) Vol-II dated 26.12.2007 issued by the 2 nd respondent |
| Annexure A8 | - True copy of the proceeding F.No.1/16/2005-Edn/Estt/1109 dated 22.4.2010 |
| Annexure A9 | - True copy of the Recruitment Rule dated 29.1.2011 published on 15.2.2011 issued by the Secretary Education |
| Annexure A10 | - True copy of the order F.No.36/31/2009-Edn/1193 dated 24.9.2012 issued by the Secretary Education |
| Annexure A11 | - True copy of the order in OA No.23/2013 dated 22.6.2016 |
| Annexure A12 | - True copy of the proceeding F.No.36/5/2013-Edn/Estt. Dated 2.5.2017 issued by the Second respondent |
| Annexure A13 | - True copy of the proceeding F.No.6/5/2015-Edn/Estt/516 dated 3.7.2017 issued by the second respondent |
| Annexure A14 | - True extract of seniority list of cooks working in various islands under the Education Department. |

- Annexure R1(a) - True copy of the O.M No.51016/2/90-Estt(C) dated 10.9.1993 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) New Delhi
- Annexure R1(b) - True copy of the letter F.No.36/1/97-Genl dated 20.3.1997 issued by the Secretary (Administration)
- Annexure R1(c) - True copy of the order of DoP&RD F.No.5/6/2003 dated 12.11.2003
- Annexure R1(d) - True copy of the letter F.No.20/5/2008-Fin dated 2.2.2009 issued by the Secretary (Finance) and Chairman 6th CPC IFC, Administration of the UTL
- Annexure R1(e) - True copy of the order F.No.18/2/2010-Estt/891 dated 10.3.2011 issued by the Director (Services), Administration of the Union Territory of Lakshadweep

.....
