

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

No. O.A. 133/AN/2016

Date of order: 03.06.2019

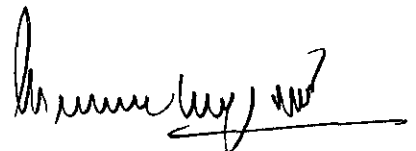
**Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member**

Shri P. Kathiresan, S/o Shri V. Ponnaiah
Resident of Garacharma, Port Blair
Terminated Daily Rated Mazdoor
Worked as Chowkidar
Under the Directorate of Education,
Andaman & Nicobar Administration
At Port Blair – 744101.

.. Applicant

-Versus-

1. The Union of India
Through the Secretary to the Govt. of India
Ministry of Human Resource Development
(Department of School Education)
Shastri Bhawan, New Delhi – 110001.
2. The Lieutenant Governor
Andaman & Nicobar Islands, Raj Niwas
Port Blair – 744101.
3. The Chief Secretary
Andaman & Nicobar Administration
Secretariat, Port Blair – 744101.
4. The Secretary (Education)
Andaman & Nicobar Administration
Port Blair – 744101.
5. The Director of Education
Directorate of Education
Andaman & Nicobar Administration
Port Blair – 744101.



6. The Principal
District Institute of Education and Training (DIET)
Garacharma, Port Blair, South Andaman.

.. Respondents

For the Applicant : Mr. G. B. Kumar

For the Respondents : Md. Tabraiz

ORDER (ORAL)

N. NEHSIAL, MEMBER (A):

This is the case where the applicant shri P. Kathiresan, a casual employee is asking for the benefits of regularization under the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Ors. Vs. Uma Devi and Ors. (2006) 4 SCC 1.**

2. The reliefs as sought by the applicant in his O.A. are as under:-

- " A.(I) An order be passed setting aside the impugned order No. 2381 dated 21.07.2016 passed by the respondent No. 5 whereby rejected the claim of the applicant for consideration of his case for regularization on the fold that the applicant did not have requisite qualification of Xth Standard pass.
- II. An order be passed directing the respondent No. 5 to regularize the services of the applicant on and from 25th Sept 1996 in the Group D post which was re-designated as Multi-Task Staff after the implementation of the 6th Central Pay Commission in terms of para 53 of the Uma Devi's case.
- B. An order be passed directing the respondent authorities to transmit the original records of the case before this Hon'ble Court so that after perusing the same, conscionable justice may be rendered to the applicant giving them regular appointment.
- C. Any other relief or reliefs, order or orders, direction or directions, as your Honour deem fit and proper."

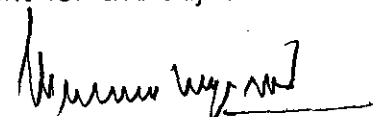


3.

The grounds for relief as demanded by the applicant are as

under:-

- (i) That the impugned order No. 2381 dated 21.07.2016, passed by the respondent No. 5 whereby rejected the claim of the applicant for consideration of his case for regularization on the fold that the applicant did not have requisite qualification of Xth Standard pass for the Group D post which was re-designated as Multi-Task Staff after the implementation of the 6th Central Pay Commission is bad in law and in fact.
- (ii) That the reason assigned by the respondent no. 5 in the impugned order No. 2381 dated 21.07.2016 that in absence of requisite qualification of Xth Standard pass in terms of the recruitment rule for the Group D post which was re-designated as Multi-Task Staff which came into existence in the year 2006 after the implementation of 6th pay commission. In the said impugned order, the respondent authorities also failed to appreciate that they have categorically stated that the applicant has worked for more than 10 years without any intervention or order of any court and therefore, the case of the applicant could have been considered on the basis of Recruitment Rule for the Group D post.
- (iii) That the respondent authorities, particularly respondent No. 5 giving completely goby to the judgment of the Hon'ble Apex Court in Uma Devi's case and taking irrelevant consideration rejected the case of the applicant which otherwise deserved to be allowed by the respondent authorities.
- (iv) That the respondent authorities particularly the respondent No. 5 failed to appreciate that the point of consideration with regard to the educational qualification of the applicant would be in terms of the Recruitment Rule prevailing during the year 1996 when the applicant was appointed to the Group D post which was re-designated as Multi-Task Staff after implementation of the 6th Central Pay Commission.
- (v) That the respondent authorities particularly respondent No. 5 deliberately taking into consideration the Recruitment Rule of 2006 for the Group D post. The entire exercise adopted by the respondent authorities whereby despite of the order of this court to consider the case of the applicant within three months, kept pending for near about 2 years and thereafter rejected the same taking irrelevant ground is not all relevant for the adjudication.



The respondent No. 5 ought to have considered the fact that the Recruitment Rule for the Group D post which was re-designated as MTS after 6th CPC did not have retrospective effect and therefore, the applicant could have been considered.

- (vi) That the respondent No. 5 failed to appreciate that the case of the applicant is at par with para 53 of the Uma Devi's judgment passed by the Hon'ble Apex Court and therefore warrant regularization of the service of the applicant. The respondent No. 5 failed to appreciate that the applicant is entitled to be regularized in the said post since the applicant fulfills the criteria emboldened in para 53 of the Hon'ble Apex Court judgment.
- (vii) That the respondent No. 5 failed to appreciate that though admitted the fact that the applicant completed more than 10 years of service under the respondent No. 5 against daily rated/contract basis and part-time basis without intervention of order of any court, but rejected the claim of the applicant on the ground that the applicant did not have the requisite qualification of Class X after the implementation of the 6th CPC. The respondent No. 5 ought not to have rejected the claim of the applicant for regularization by taking into irrelevant considerations which was not at all prevailing on the date when the applicant incepted in the service and completed ten years of service. Hence the action of the respondent authorities is bad in law and in fact.

4. The case has already adjudicated by this Tribunal in O.A. No. 107/AN/2012 dated 30.09.2015 wherein it has been directed as under:-

"The respondent authorities shall within a period of three months from the date of receipt of a copy of this order analyze the factual scenario pertaining to the applicant and if his case is really coming within paragraph 53 of the cited judgment then his claim of appointment may be considered and a speaking order be issued to the applicant immediately thereafter."

5. In compliance with the direction of this Tribunal, the respondent authorities have issued a speaking order No. 2381 dated 21.07.2016 wherein they have categorically rejected the prayer of the applicant as under:-

"AND WHEREAS, the applicant has worked in this Education Department for more than 10 years against



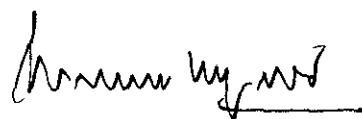
Daily Rated, Contract Basis and Part Time Basis without intervention of order of any Court. But he does not possess the requisite education qualification as per RR which was made compulsory for appointment of MTS as per VI CPC.

NOW THEREFORE, in view of reasons narrated as above, the undersigned is constrained not to consider the request of the applicant for regularization of his service in the absence of requisite qualification and which offends the recruitment rules. The applicant may acquire the requisite qualification before apply for regular post of MTS."

6. The respondents have filed their reply/written statement on 15.02.2018 wherein among others, they have pointed out at para 10 as hereunder:-

"On implementation of VI CPC the Andaman & Nicobar Administration has declared all the Group 'C' posts borne in the establishment of the Directorate of Education as a common category with the new designation MTS (Multi Tasking Staff) vide Administration's order No. 457 dated 10th February 2012. The Recruitment Rule for the post of MTS has also been amended as per guidelines of VI CPC and notified in the Official Gazette."

7. The rejoinder has been filed by the applicant wherein he has pointed out that the applicant was appointed as Daily Rated Mazdoor on 25.09.1996 and therefore the service affairs of the applicant will be governed in terms of the Recruitment Rule which was in existence during the year 1996, more so, the respondent authorities in their written statement stated that in the earlier round of litigation filed by the applicant have categorically admitted that earlier the educational qualification was VIIIth standard pass which was enhanced to Class Xth standard after implementation of the 6th CPC.



8. We have considered the above issues as submitted by both the parties. Since the applicant was engaged on casual basis in 1996 and educational qualification required at that relevant time was only Class VIII and the applicant has certificate of Class IX, it is not fair insist for the requirement of higher educational qualification subsequent to his initial date of engagement. Therefore, the respondent authorities do not have justification to reject his regular appointment on the basis of the applicant not having the Class X passed qualification. Thus, the Speaking Order No. 2381 dated 21.07.2016 is liable to be set aside and quashed.

9. Accordingly, the Speaking Order No. 2381 dated 21.07.2016 is hereby set aside and quashed. Respondent authorities are hereby directed to regularize the services of the applicant w.e.f. 25th September 1996 in the Group D post which has been re-designated as Multi-Task Staff after the implementation of the 6th CPC in terms of Para 53 of **Uma Devi's** case (**supra**). The order to this effect may be issued within a period of one month from the date of receipt of a copy of this order.

10. O.A. stands disposed of accordingly. There shall be no order as to the costs.

(N. Neihzial) ✓
Administrative Member

(Bidisha Banerjee)
Judicial Member