

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00196/2015

Dated this Monday the 31st day of December Two Thousand Eighteen

PRESENT

HON'BLE MR. T. JACOB, Member (A)

N.Ramesh,
S/o. R.Natarajan,
Kalandira Village, 635751,
Variambadi.

....Applicant

By Advocate M/s. S. Ramaswamyrajajan

Vs

Union of India rep by,
1.The Chief Postmaster General,
Tamil Nadu Circle,
Chennai 600002.

2.The Superintendent, RMS,
Railway Mail Service,
'M' Division,
Chennai 600008.

....Respondents

By Advocate Mr. G. Dhamodaran



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The applicant has filed this OA seeking the following relief:

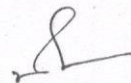
"i. To direct the respondents first to reinstate the applicant in duty and to convert him as full time casual labourer with effect from 1997 and thereafter to confer temporary status to the applicant from the year 2000 as per the scheme and to regularise the service of the applicant in erstwhile Group 'D' cadre with effect from January 2003 and to give all consequential benefits and

ii. To pass such further or other orders as this Hon'ble Tribunal may deem and proper in the circumstances of the case with cost and thus render justice."

2. The facts of the case as submitted by the applicant are as follows :-

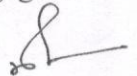
The applicant had initially joined as Rest House Attendant in the year 1995 at Bangalore Rest House and subsequently transferred to various places and later on the respondents had extracted work for 12 hours per day and paid emoluments and allowances to that effect. But he had not been converted as Full Time Casual Labourer and his services are also not regularized till date. The applicant had made a representation to the respondent on 15.12.2014, requesting to convert him as Full Time Casual Labourer and to regularize his service. But instead of considering his request, he had been terminated immediately from service by a verbal order on 17.12.2014. Aggrieved on that, he had decided to file this application before this Hon'ble Tribunal to get remedy and justice.

3. The applicant would submit that the respondent had not taken any steps to confer temporary status with effect from 2000, later on to regularize his services even after the representation given by him citing the order given by this Tribunal in OA 1147 of 2011, because, he is also a similarly placed person like the



applicant in the said OA. And thus this action is illegal and in violation of such rules and Articles 14, 16 of the Constitution of India.

4. The respondents have filed reply. The respondents would submit that the applicant was engaged as an outsider to work at the Guest House for a quantum of 5 hours. The Rest House attenders are outsiders only and not engaged through employment exchanged and are not engaged against any sanctioned posts. Further, his engagement as outsider at Rest House, Bangalore was withdrawn and he was asked to work at Jolarpettai RMS as outsider. He was not appointed as part time casual labourer at Jolarpettai. The respondent would further submit that there is no provision in the rules for regularisation of the services of the outsiders who are not appointed as per Recruitment Rules in prevalence and who are not engaged through Employment Exchange or any other employment agency. Further, the applicant does not fulfil the conditions prescribed in the Postal Directorate letter dt. 30.06.2014. As for the CAT orders referred in the case of Shri. M.Murugan, consequent upon the death of Shri. S. Mani on 31.08.1998 who was working as Mazdoor in Chennai Sorting Division, his son Shri. M.Murugan was engaged as unapproved Mazdoor on compassionate grounds, in Chennai Sorting Division vide order dt. 28.10.1998. There is no similarity in both the cases as the case of Shri M.Murugan was dealt under engagement under compassionate grounds, issued by an order of engagement clearly mentioning the death of his father. The applicant was working in the capacity of outsider. As his services were not required he was disengaged.



5. Learned counsel for the applicant would submit that the action of the respondents in terminating the applicant from service without disposing his representation for conferring temporary status and regularisation is illegal, arbitrary and in violation of such Rules and Articles 14 and 16 of the Constitution of India. He has relied on the following citations in support of his submissions :-

- I. Order dated. 31.07.2002 of the Ahmedabad Bench of this Tribunal in OA 111/1995.
- II. Order of Principal Bench of this Tribunal in OA 1446/1998 dt. 01.12.1998.
- III. Order of Hon'ble Madras High Court in WP 17347 of 2004 dt. 24.06.2004.
- IV. Order of Hon'ble Madras High Court in WP 25385 of 2003 dt. 18.06.2009.
- V. Judgment of Hon'ble Punjab and Haryana High Court in Letters Patent Appeal No. 1261 of 1992 dt. 20.09.2001.
- VI. Judgment of Hon'ble Apex Court in Civil Appeal No. 5887 of 2014 decided on 01.07.2014.

6. Learned counsel for the respondents would submit that the applicant was neither engaged through employment exchange nor any formality was observed in engaging the applicant. The applicant does not fulfil the conditions prescribed. As such his request for regularisation cannot be acceded to. The applicant was disengaged as his services were not required which is well within the purview of rules. Learned counsel for the respondents also relied upon the following citations :-



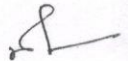
I. Order of the Hon'ble Madras High Court in WP Nos. 6474 & 9071 of 2015 dt. 14.07.2015.

II. Order of the Hon'ble Apex Court in Civil Appeals Nos. 2726-29 of 2014 with Nos. 2730-31 of 2014 decided on 21.02.2014.

7. I have carefully considered the relevant material and rival submissions.

8. On perusal of the records, it is seen that the applicant was not appointed as Part Time Casual Labourer as per the formalities prescribed in the appointment of Part Time Casual Labourer. He was arranged only for a quantum of 5 hours for functional necessities and not engaged continuously. Initially, he was engaged as a Rest House attendant with a break up in his duty hours. Later his engagement was withdrawn and was engaged to work as outsider in the mail office on temporary basis. There were breaks in between his engagement as outsider rest house attendant/outsider. Further the applicant was engaged as Rest House Attendant at Rest House, Bangalore on 13.11.1995 ie, after 01.09.1993 and no formalities were followed in his engagement as explained supra. After 01.09.1993, no outsider can be engaged as casual labourer whether it is part time casual labourer/Full Time Casual Labourer and he should be treated as a Casual Worker only. As such he is not eligible for regularisation/conferment of temporary status as per Rules and instructions on the subject. Also as the applicant's services were not required furthermore, he was disengaged. Hence, his request to reinstate him to duty cannot be acceded to.

9. The Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India was a one time measure and was applicable



only to the Casual Labours working in the year 1993 and was not an one time Scheme and in view of the said Scheme, the applicant cannot claim the benefit of temporary status or claim status at par with the workmen having temporary status. The said Scheme has been considered by the Hon'ble Supreme Court in the case of Union of India vs. Mohan Pal, reported in AIR 2002 SCV 2001, Union of India vs. Gagan Kumar, reported in AIR 2005 SC 3107, Director General, Doordarshan vs. Manas Dey and Ors. Reported in AIR 2006 SC 263 and Controller of Defence Accounts vs. Dhani Ram and Ors., reported in AIR 2007 SC 2650. Further, reference has been made to the case of State of Rajasthan vs. Daya Lal by the Hon'ble Supreme Court in the case of Secretary to Government School Education Department, Chennai vs. R. Govindaswamy and others reported in 2014 (4) SCC 769 wherein it has been held as under:-

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme under/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years,



will not entitle such employees to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off dates), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

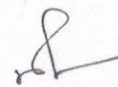
(iv) Part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuation of part time temporary employees."

As such, the judgments referred to by the counsel for the applicant are not relevant to the facts of the present case.

10. One aspect has to be deeply examined. May be the applicant did not enter the department through Employment Exchange and thus the judgment of the Hon'ble Apex Court in Umadevi, if applied, regularisation in this case is impossible. However, the same judgment has approved the decision in another case of State of Haryana Vs Piara Singh, (1992) 4 SCC 118 wherein the Apex Court has held as under:-

"... an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

Though respondents have stated that the service of the applicant had been terminated as the same was no longer required, nowhere they have averred that



after the termination of the applicant none else had been engaged on ad hoc basis to function in an identical job. If verification of the same surfaces that the respondents have actually, after termination of the applicant engaged some one else, though not exactly in the same place or function but in any other aligned function and on ad hoc basis, to which the applicant would have filled the bill, the respondents are duty bound to explore the feasibility of engaging the applicant. To this extent the applicant has crystallised his rights.

11. In view of the above, it is held that the applicant cannot derive any benefit of past service for regularisation, but subject to the following two aspects, he is entitled to be considered for ad hoc appointment as and when necessity arises for engagement of part time ad hoc labour:-

- a. After termination, either in the same place or in respect of any aligned function, respondents did engage any other person ignoring the entitlement of the applicant.
- b. The applicant has not crossed sixty years of age.

The above drill be carried out within a period of three months from the date of receipt this order and further action taken. In case none has been so appointed, the fact of the same shall be intimated to the applicant.

12. The OA is disposed of on the above terms. No costs.