

**Central Administrative Tribunal
Madras Bench**

**OA/310/01160/2014, OA/310/01341/2012, OA/310/01048/2012,
OA/310/00100/2014 & OA/310/01216/2012**

Dated the 10th day of December Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

OA 1160/2014

S.Usha,
W/o Late S.Sekar,
6/321, Siluvai Nagar,
Kovalam Road,
Kanyakumari 629 702. .. Applicants
By Advocate **M/s.Akbar Row**

Vs.

1. The Union of India, rep by
The Secretary to Government,
M/o Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi 110 001.
2. The Chief Commissioner of Customs,
No.1, Williams Road, Cantonment,
Trichy-1.
3. The Commissioner of Customs,
No.1, Williams Road, Cantonment,
Trichy-1.
4. The Assistant Commissioner of Customs,
Customs Division,
66, Beach Road,
Tuticorin. .. Respondents

By Advocate **Mr.V.Sundareswaran**

OA 1341/2012

M.Rukmani

W/o V.Mani,
 97, Gandhipuram,
 Katary Road,
 Coonoor 643 102. .. Applicant
 By Advocate **M/s.Akbar Row**

Vs.

1. The Union of India, rep by
 The Secretary to Government,
 M/o Finance, Department of Revenue,
 Central Board of Excise & Customs,
 North Block, New Delhi 110 001.
2. The Chief Commissioner of Central Excise,
 No.6/7, ATD Street,
 Race Course Road,
 Coimbatore Dist. 641 018.
3. The Commissioner of Central Excise,
 No.6/7, ATD Street,
 Race Course Road,
 Coimbatore Dist. 641 018.
4. The Commissioner of Central Excise,
 Foulks Compound,
 Anai Road, Salem 636 001. .. Respondents

By Advocate **Mr.V.Sundareswaran**

OA 1048/2012

G.Chitra,
 W/o K.Gunasekaran,
 52/18, JKK Road,
 Post Office (opposite),
 Kumarapalayam 638 183,
 Erode Dist. .. Applicant in OA/Respondents in RA
 By Advocate **M/s.Akbar Row**

Vs.

1. The Union of India, rep by
 The Secretary to Government,
 M/o Finance, Department of Revenue,
 Central Board of Excise & Customs,
 North Block, New Delhi 110 001.
2. The Chief Commissioner of Central Excise,

No.6/7, ATD Street,
Race Course Road,
Coimbatore Dist. 641 018.

3. The Commissioner of Central Excise,
No.1, Foulks Compound,
Anaimedu,
Salem Dist. 636 001.
4. The Asst. Commissioner of Central Excise,
Erode Central Excise Division,
81, Bharathi Nagar, Choolai,
Veerappanchattram Post,
Erode Dist. 638 004.

.. Respondents in OA/Applicant in RA

By Advocate **Mr.V.Sundareswaran**

OA 100/2014

S.Amutha,
W/o late Kasi Raka,
Soundararaman Koil Street,
15th Ward, Ramar Patham,
Rameswaram.

.. Applicant

By Advocate **M/s.Akbar Row**

Vs.

1. The Union of India, rep by
The Secretary to Government,
M/o Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi 110 001.
2. The Chief Commissioner of Central Excise & Customs,
No.1, Williams Road, Cantonment,
Trichy Dist.
3. The Commissioner of Custome,
No.1, Williams Road, Cantonment,
Trichy Dist.
4. The Deputy Commissioner of Customs,
Customs Division,
Mandapam Road,
Ramanathapuram.

.. Respondents

By Advocate **V.Sundareswaran**

OA 1216/2012

R.Shanmugham,

S/o M.Rangasamy,
Casual Labour,
O/o the Addl. Director General,
Directorate of Revenue Intelligence,
Rajaji Bhawan, Besant Nagar,
Chennai 600 020. .. Applicant
By Advocate **M/s.Akbar Row**

Vs.

1. The Union of India, rep by
The Secretary to Government,
M/o Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi 110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi 110 001.
3. The Director General,
Directorate of Revenue Intelligence,
D-Block, Inderprastha Bhawan,
7th Floor, Inderprasths Estate,
New Delhi 110 002.
4. The Addl. Director General,
Directorate of Revenue Intellingence,
Rajaji Bhawan, Beseant Nagar,
Chennai 600 020. .. Respondents

By Advocate **V.Sundareswaran**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief:-

OA 1160/2014:

“to direct the first, second and third respondents to consider the name of applicant for conferring Temporary Status taking into account her long service of 15 years as Casual Labourer and;

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

OA :1341/2012:

“to direct the first respondent and respondent to consider the name of the applicant for conferring Temporary Status from the date of her juniors with consequential benefits taking into account applicant's long service of 24 years as Casual Labourer and;

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

OA 1048/2012:

“to direct the first, second and third respondents to consider the name of applicant for conferring Temporary Status taking into account her long service for 21 years as Casual Labourer and;

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

OA : 100/2014:

“to direct the 1st and 2nd respondents to consider the name of the applicant for conferring Temporary Status as granted to her juniors taking into account the applicant's long service of 9 years as Casual Labourer with all consequential benefits; and

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

OA : 1216/2012:

“to direct the first and second respondents to consider the name of applicant for conferring Temporary Status with consequential benefits taking into account his long years of service as Casual Labourer and;

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

2. As the issue involved in all these applications is identical and the relief sought for also is similar, these applications have been heard together and are being disposed off by this common order.

3. The brief facts leading to filing of these cases are that the applicant in OA 1160/14 was appointed as Casual Labourer/Contingent employee in the year 1998 in the office of the Superintendent of Customs, Kanyakumari. Since then she is working in the said capacity for 15 years continuously without break. It is submitted that some of the contingent employees working in Trichy Commissionerate who had put in 3 to 4 years of service have been granted Temporary Status in the year 2000. As the applicant is also entitled for grant of Temporary Status she made representation dt. 22.10.2013, which evoked no response. It is further submitted that

the 3rd respondent by letter dt. 16.2.2001 addressed to the 1st respondent proposed for grant of temporary status to similarly situated persons like the applicant as given to 13 contingent employees who have joined after 1993 as a measure of uniform policy. It is also submitted that the Hon'ble High Court in judgment dt. 19.7.11 in batch of WP Nos.16733/09, 16889/09, 11492/06 and 18969/06 has directed the respondents to consider the case of Casual Labourers therein who were outsourced for grant of Temporary Status and regularization as a one time measure taking into account their long years of service put in by them. Further, the Hon'ble High Court of Andhra Pradesh by judgment dt. 08.11.10 upheld the order passed by the Hyderabad Bench of this Tribunal in OA 97/09 dt. 05.4.10 for grant of temporary status to the casual labourers working under the respondent department at Guntur and the SLP 6357/11 filed against this was dismissed by the Hon'ble Supreme Court on 02.3.11. This Tribunal has granted temporary status to some casual labourers working under the respondents' department by order dt. 28.2.13 and 21.8.13 in OA Nos.1048/12 and 1341/12 respectively. Hence, she has filed this OA seeking a similar relief for grant of temporary status considering her long years of service.

4. The respondents have entered appearance but have not filed any reply.

5. The applicant in OA 1341/12 was appointed as casual labourer/contingent employee in the year 1988 in the Central Excise Coonoor Range of Central Excise Coonoor Division. The applicant belongs to SC Community. She has put in 24 years of service. Since her inception into service she is continuously working without any break till date. It is submitted that some of the contingent employees working in

Trichy Commissionerate who had not put in 3 to 4 years of service have been granted Temporary Status in the year 2000. The applicant made various representations to consider her name for grant of Temporary Status, which evoked no response. It is further submitted that as per the scheme for conferment of temporary status dt. 10.9.93, those casual labourers who have rendered atleast 240 days (206 days in the cases of offices observing 5 days week) of continuous services in a year are eligible for grant of temporary status. The applicant has put in more than 206 days of continuous service in a year and hence she is eligible for the said benefit of temporary status by the respondents. In this connection the applicant relies on the order passed by this Tribunal in OA 372/09 and 502/09 wherein the applicant therein got the relief of grant of temporary status which was upheld by the Hon'ble High Court of Madras in WP Nos.21485 and 21486/10. Hence she has filed this OA seeking the aforesaid relief.

6. The respondents have filed a reply statement stating that though the applicant was employed initially in the year 1988 on temporary basis for a duration of 3.1/2 hours per day she was engaged for 8 hours per day only from the year 1998 onwards and her engagement was not for more than 90 days continuously. The applicant was not engaged from 01.2.06 and the department has outsourced the work by employing persons from other agencies and as such, the applicant cannot claim the relief. Hence they prayed for dismissal of the OA. Further, the policy regarding engagement of casual workers in Central Govt. offices were reviewed and DOPT issued guidelines vide OM dt. 07.6.1988 wherein it is clarified that the services of casual workers

recruited after 07.6.88, the date on which ban orders came into operation, will have to be dispensed forthwith. Only those casual workers who were recruited before 07.6.88 and continued to be in service could be considered for regularization, subject to the availability of vacancies. The applicant herein was engaged only subsequent to the said OM. Subsequently the guidelines in the OM dated 07.6.1988 was reviewed and formulated a scheme called “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993” to grant temporary status to the casual employees vide OM dated 10.9.93. The said scheme came into force w.e.f. 01.9.93 and the scheme stated that it applies only to such of those casual labourers in employment on the date of issue of the said order. As the applicant has not fulfilled the guidelines stipulated in the OM dt. 07.6.88, the question of grant of temporary status in the applicant's case does not arise and the applicant is not at all covered under the said scheme. Hence they prayed for dismissal of the OA.

7. The applicant filed rejoinder reiterating the contentions made in the OA. This Tribunal after hearing both sides passed orders on 21.8.13 directing the respondents to consider the applicant's name for conferring temporary status from the date on which her juniors have been granted the temporary status. Against the said order WP 26211/13 was preferred by the respondents and the Hon'ble High Court set aside the orders and restored it on the file with a direction to this Tribunal to dispose of the same after giving sufficient opportunity to file reply statement and thereafter decide the matter on merits and as per law.

8. The applicant in OA 1048/12 was appointed as Casual Labourer/Contingent

Employee under the respondents in the year 1991. She has put in 21 years of continuous service. From the date of her initial appointment, she has been working for more than 8 hours every day without any break for 206 days. The applicant is seeking the benefit of OM dated 10.9.93 of the DoPT regarding “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993”. It is submitted that some of the contingent employees working in Trichy Commissionerate who had not put in 3 to 4 years of service have been granted Temporary Status in the year 2000. The applicant made various representations to consider her name for grant of Temporary Status, which evoked no response. The policy regarding engagement of casual workers in Central Govt. offices were reviewed and DOPT issued guidelines vide OM dt. 07.6.1988 wherein it is clarified that the services of casual workers recruited after 07.6.88, the date on which ban orders came into operation, will have to be dispensed forthwith. Only those casual workers who were recruited before 07.6.88 and continued to be in service could be considered for regularization, subject to the availability or vacancies. The applicant herein was engaged only subsequent to the said OM. Subsequently the guidelines in the OM dated 07.6.1988 was reviewed and formulated a scheme called “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993” to grant temporary status to the casual employees vide OM dated 10.9.93. The said scheme came into force w.e.f. 01.9.93 and the scheme stated that it applies only to such of those casual labourers in employment on the date of issue of the said order. As the applicant has not fulfilled the guidelines stipulated in the OM dt. 07.6.88, the

question of grant of temporary status in the applicant's case does not arise and the applicant is not at all covered under the said scheme. Hence they prayed for dismissal of the OA.

9. The applicant filed rejoinder reiterating the contentions made in the OA. This Tribunal after hearing both sides passed order on 28.2.13 allowing the OA and granting the relief prayed by the applicant. Against the said order, the respondents filed RA 18/13 seeking review of the order passed in OA 1048/12 dt. 28.2.13 by taking on record the submissions made in para 15 of the rejoinder and the decision of the Hon'ble Apex Court in (2011) 7 SCC 397. The said RA was dismissed by this Tribunal on 15.7.13. The respondents preferred WP 25595/2013 before the Hon'ble High Court. The High Court on 18.11.13 in WP Nos.25595 & 26211/13 stated that “as the Tribunal has relied upon the order passed in W.P.Nos.16733/09, etc. batch, dated 19.7.2011, for allowing the original applications and the appeals preferred against the said order in SLP Nos.13614-13617/2012 are pending as on today and interim order was granted on 25.10.2013 by the Hon'ble Supreme Court stating that the employment of those who are already working shall not be disturbed during the pendency of the appeals, there will be an order of status-quo. Post these matters after disposal of SLP Nos.13614-13617/2012. The interim order granted on 16.9.2013 is accordingly modified” and remanded the matter back to this Tribunal.

10. The applicant in OA 100/14 was appointed as Casual Labourer/Contingent Employee under the respondents on 01.7.1994. She has put in 19 years of continuous service. From the date of her initial appointment, she has been working for more than

8 hours every day without any break for more than 206 days. It is submitted that the 3rd respondents have granted temporary status to 56 Casual Labourers who were continuously working for one year in the department on 13.1.94. In the year 2000, the 3rd respondent has conferred similar benefits to her juniors who had not put in 3 to 4 years of service. The applicant being similarly placed person, she is seeking to extend the same benefit of grant of temporary status as conferred on her juniors. In this connection, the applicant is relying upon the directions issued by this Tribunal in OA Nos.372/09 and 502/09 dt. 06.7.10 which was confirmed by the Hon'ble High Court in WP Nos.21485/10 & 21486/10 dt. 21.9.10.

11. The respondents filed the reply statement which proceeds to the effect that there is no employer-employee relationship between the Department and the applicant from October 2006 onwards since the engagement of casual worker was discontinued and housekeeping job was handed over to a service provider. Further, she has not been engaged against the sanctioned post and he has no legal right for conferment of temporary status. Hence, they prayed for dismissal of the OA.

12. The applicant filed rejoinder reiterating the contentions made in the OA. After hearing both sides, this Tribunal passed orders on 07.4.15 was disposed off with a direction to the respondents to consider the case of the applicant for conferring temporary status taking into account the length of service as casual labourer. The respondents challenged the orders in WP 11111/2016 and the Hon'ble Madras High Court set aside the orders and restored it on the file and directed the Tribunal to dispose of the same after giving sufficient opportunity to file reply statement and

thereafter decide the matter on merits and as per law. But this common order of this Tribunal dt. 07.4.15 was upheld by the Madras High Court in their order dt. 03.12.18 in WP Nos. 31851 to 31854.

13. The applicant in OA 1216/12 was appointed as Casual Labourer w.e.f. October 1993 under R4. He is continuously working for 8 hours every day for the last 19 years. Eventhough R4 has recommended for granting temporary status, considering his long engagement, R2 has not granted. Employees working under Trichy Commissionerate under R2 had granted temporary status to casual workers working there in 1994 and in the year 2000. He prays for granting temporary status in the light of the “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993”.

14. The respondents in the reply contend that the applicant is not entitled to get the benefit of the scheme. When the scheme was implemented the applicant was not in service on the crucial date. Even as per certificate issued and produced here as A1, the applicant was engaged only w.e.f. February 1994. The applicant has not produced any order of engagement prior to that date. According to the respondents, the Central Government has banned the appointment of Casual Labourers and thereafter, casual labourers were supplied by one Labour Contractor by name “Stardust” Chennai. The applicant is thereafter working under the said Contractor w.e.f. 27.11.02. There is no employer-employee relationship between the applicant and respondents.

15. The applicant was never engaged as casual labourer for 10 years or more. The applicant is not working under the respondents as casual labour from 2002 onwards

and the cause of action is barred by limitation.

16. The applicant filed rejoinder reiterating the contentions made in the OA.

17. **The facts common to these batch of cases can be summarised as follows:-**

All the applicants claim that they were all engaged as Casual Labourers by the Commissionerate of Central Excise, Trichy and Coimbatore for various periods and the applicants in various OAs claim continuous employment as Casual Labour in the department as follows:-

<i>O.A.No.</i>	<i>Name S/Shri/Smt</i>	<i>Date of initial engagement as Casual Labour</i>
1216/12	Shanmugam	February 1994 onwards till date
1048/12(RA 18/13)	G.Chitra	1991 onwards
1341/12	M.Rukmani	30.10.98
100/14	S.Amutha	From 1994 onwards
1160/14	S.Usha	From 01.2.99

18. According to them, they had put in their work as casual labourers for the last many years and they are not given “temporary status” till this date. The action of the respondents is arbitrary and discriminatory. The counsel for the applicants mainly rely on the decision of the Hon'ble Supreme Court in ***State of Karnataka v. M.L.Kesari & 7 Others reported in [2010 (7) SCC 743]*** wherein the Apex Court had held that “*The respondents ought to have considered the case of applicant for regularization as she had put in 24 years of service since her initial appointment in the year 1988 and also having rendered continuous service of 206 days in a year without any break but the action of the respondents to deny the grant of atleast*

temporary status to the applicant, let alone regularization is nothing but a hostile discrimination in the eyes of law.” It was also contended that the Hyderabad Bench of this Tribunal in OA 97/09 in a similar case granted temporary status to casual labourers in Central Excise and the said order of CAT was implemented there.

19. The counsel for the respondents submit that this batch of OAs are barred by limitation as the applicants are not in the service of the respondents which is given as under:-

<i>O.A.No.</i>	<i>Year from which the applicant ceased to be working under the respondents</i>
1216/12	27.11.02
1048/12(RA 18/13)	2006 onwards
1160/14	May 2005 onwards
100/14	31.1.2008
1341/12	2006 onwards

20. According to the respondents, these applicants are not engaged as casual labourers by the respondents. The department had outsourced the services and hence there is no employer-employee relation with the applicants. They had filed these OAs on the basis of an after thought. The M/o Finance had banned the engagement of casual labourers from the year 2005 onwards (F.No.A-12034/1/2005-AD III B, Govt. of India, M/o Finance – Dept. of Revenue, Central Board of Excise & Customs dt. 2.5.05). So, according to the respondents, the OAs are misconceived and barred by limitation as it is filed beyond 1 year period after the cause of action (S.21 of Act).

21. It was also argued by the counsel that OM No.490191/1/2006/Estt © dt.

11.12.06 was issued to regularize as a one time measure the services of irregularly appointed employees who are duly qualified in terms of the statutory recruitment rules for the post and who have worked for 10 years and more in duly sanctioned posts but not under the cover of the orders of Courts or Tribunals. So, the applicants are not covered under the above circular as they were not appointed to any sanctioned post.

22. The Hon'ble Supreme Court in Civil Appeal No.3146/19 in ***Union of India & Others v. All India Trade Union Congress***, held that it is not the function of court to frame any scheme and it is the prerogative of the government to do it.

23. So, according to the respondents, the decision of the Hon'ble Supreme Court in ***State of Karnataka v. M.L.Kesari & Others*** (referred supra) has no application in this case. The applicants in OA 1160/14, 1341/12, 100/14 and 1216/12 had not completed 10 years as casual labourers under the respondents as their engagement were terminated before that period.

24. We had perused the pleadings and various documents produced in these batch of cases. The main point to be considered are whether the OAs are filed after the period of limitation and if not whether the applicants are entitled to get temporary status as contemplated in the scheme-Casual Labourers (Grant of Temporary Status & Regularization) Scheme of G.O.I. 1993. Admittedly, the applicants were not in employment when the scheme was implemented. The Hon'ble Supreme Court in ***Secretary to Government, School Education Department, Chennai v. R.Govindaswamy & Others [(2014) 4 SCC 769]*** had categorically held that “Even

where a scheme is formulated for regularization with a cut off date (i.e. 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 date), it is not possible to others who were appointed subsequently to that 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 a fresh scheme providing for successive cut off dates.”

25. On going through the facts of the case, we find that the decision of the Hon'ble Apex Court in ***State of Karnataka v. M.L.Kesari & Others*** (referred supra) has no application in this case. Here the applicants were not engaged to any vacant post following the procedure prescribed in the rules. So, the mere fact that the applicants continued as casual labourers will not entitle them to claim regularization or temporary status. The counsel appearing for the applicants contended that the CAT, Hyderabad Bench in OA 97/09 dt. 05.4.10 had granted temporary status to few employees in a similar case. We are not in a position to appreciate the similarities of facts as the counsel had not produced the said decision for reference. In this case, the applicants have failed to substantiate their case of continuous engagement as casual labourers till date as they claimed. According to the respondents, the applicants are not in their employment now and it is time barred. The applicants ought to have challenged their termination and outsourcing the jobs within a period of 1 year after the cause of action had arisen. So, we are of the opinion that the OAs are barred by limitation under S.21 of the AT Act.

26. In view of the above finding, there is no merit in the OAs and they are liable to

be dismissed.

27. Accordingly, OA Nos.1341/12, 1216/12, OA 1048/12, 100/14 and 1160/14 will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

10.12.2019

/G/