

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 31 DAY OF JANUARY, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01543/2014

K.Sarojini,
Daughter of Kurubakaran,
R/o No.47, Veerasamy Main Street,
Ayanavaram, Chennai 600 023
and working as
Part Time Contingent Scavenger.

...Applicant

-versus-

1. Union of India rep., by the
Chief Post Master General,
Tamil Nadu Circle,
Chennai 600 002.
2. The Superintendent of Post Offices,
Postal Stores Depot, Kilpauk,
Chennai 600 010.

...Respondents

By Advocates:

M/s P. Rajendran, for the applicant.

Mr. G. Dhamodaran, for the respondents.



ORDER

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

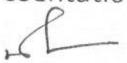
This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"...to call for the records relating to the impugned order of the first respondent in Memo No.REP/83-OA.806/2014 dated 12.8.2014 and quash the same and direct the respondent to regularize the service of the applicant as prayed for in her representation dated 29.6.2013 and grant her all consequential benefits and render justice."

2. The brief facts of the case, as stated by the applicant, are as follows:-

The applicant is working as a Part Time Contingent Scavenger in two offices of the Department of Posts, namely Circle Bag Office, Ayanavaram for four hours per day and Postal Stores Depot, Kilpauk for two hours per day. She is paid on daily rated basis and payment is made once a month. She was initially appointed on 1.3.1983 and working continuously without any break or termination. Her grievance is that although she has put in 31 years of service, her claim for regularisation has not been considered by the respondents. She will also not get pensionary benefits after her retirement. Similarly placed persons who filed OAs before this Tribunal were brought under regular establishment disregarding her claim. Hence this OA.

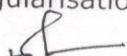
3. The respondents have filed detailed reply statement admitting the appointment of the applicant as Part Time Contingent Scavenger. It is submitted that the applicant was not sponsored through Employment Exchange. The applicant had earlier filed OA.806/2014 and this Tribunal by order dated 12.6.2014 directed the respondents to consider the representation



of the applicant in accordance with law and as per rules and pass a reasoned and speaking order. In pursuance of the above order, the representation of the applicant was considered and rejected vide Memo dated 12.8.2014 by way of a reasoned and speaking order. The applicant is being paid wages as defined in Directorate's letter dated 10.2.1988 communicated in CO letter dated 27.4.2000 issued in compliance with the Hon'ble Supreme Court decision dated 27.10.1987 in WP.No.373/86 on the basis of minimum of pay in the pay scale of regularly employed workers in the corresponding cadre ie., erstwhile Group D cadre w.e.f. 5.2.1986 with DA and ADA on the minimym of pay scale and payment is made once in a month. The applicant was engaged without following the recruitment rules and and the question of absorbing her in the vacancy of GDS/Group D does not arise. Further she has been employed only as a Part Time Contingent in two offices for less than 5 hours in each office and totally she is being employed daily for less than 8 hours only. She is not a full time employee which is one of the prerequisites for absorption as regular employee. She also does not fulfil the requisite qualification as per the statutory recruitment rules and hence the respondents pray for dismissal of the OA.

4. Heard the counsel for the respective parties and perused the pleadings and documents on record.

5. Admittedly this is the second round of litigation before this Tribunal. Earlier the applicant has filed OA.806/2014 contending that similar placed persons of the same department approached this Tribunal in OA.Nos.778, 779, 780 & 781/2011 and praying for direction to consider them for regularisation



as Scavenger or against any other MTS (Group D) post with all consequential benefits. This Tribunal vide order dated 19.1.2012 held that in view of the fact that the said applicants belong to lower strata of the society and doing the work of Sweeper and Scavenger for twenty nine years continuously, they deserve to be given regular posting and regular scales of pay and directed the department to consider them for regularisation as MTS and they should be given age relaxation, since they joined in the year 1984. Pursuant to the said order of this Tribunal, the applicants therein were brought under the regular establishment, but the said benefit was denied to the applicant since she had not approached this Tribunal earlier. Therefore, the applicant made a representation dated 29.6.2013 requesting for extension of the same benefit to her also and this Tribunal by order dated 12.6.2014 directed the respondents to consider the representation of the applicant dated 29.6.2013 in accordance with law and as per rules and pass a reasoned and speaking order. In pursuance of the above said order, the respondents considered the representation of the applicant but however, rejected the claim of the applicant by order dated 12.8.2014 for regularisation following the decision in OAs.1562, 1565 and 1569/2011 wherein this Tribunal by order dated 29.4.2011 had held that outsiders who were not initially engaged against sanctioned posts do not have any right to be absorbed in the Department. Against the said order of the respondents dated 12.8.2014, the applicant is again before us with the present OA seeking the relief of regularisation.

6. The learned counsel for the applicant would contend that when the benefit of regularisation has been given to the applicants in OA.Nos.778, 779,

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780 & 781/2011 and the said order having been implemented by the respondents, denial of the benefit to the applicant herein who is also similarly placed in all respects is discriminatory and violative of Art.14 & 16 of the Constitution.

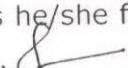
7. During the course of argument, the learned counsel for the respondents relying upon the case of Secretary to Government, School Education Department, Chennai vs. R. Govindaswamy and others (2014) 4 SCC 769 stated that the applicant is not entitled for regularisation even though she has put in long years of service because she did not work against sanctioned post. He also submitted that she is being allowed to continue in service as Part Time Contingent Scavenger even after attaining the age of superannuation.

8. The Government of India, Ministry of Communications, Department of Posts (Personnel Division) has issued a letter No.66-50/2014-SPB-I dated 30.6.2014 stipulating the policy in respect of casual labourers working in the Departments in compliance of Hon'ble Supreme Court judgement in Uma Devi's case, the relevant portion of which reads as follows:-

"3. The issue was examined in detail in consultation with the Establishment Division and following guidelines are laid down for the Casual Labourers working in the Department of Posts in compliance with the directions of the Hon'ble Supreme Court and ibid DOP&T OM:

(i) Regularisation of all the Casual Labourers, who have been irregularly appointed, but are duly qualified persons in terms of statutory recruitment rules for the post and was engaged against a sanctioned post, shall be done if they have worked for 10 years or more but not under the covers of orders of courts or tribunals as on the date of Hon'ble Apex Court's ibid judgement ie., 10.04.2006.

(ii) A temporary, contractual, casual or daily wage worker shall not have a legal right to be made permanent unless he/she fulfills the above criteria.



(iii) A Casual Labourer engaged without following the edue process or the rules relating to appointment and does not meet the above criteria shall not be considered for their absorption, regularisation, permanency in the Department.

(iv) If a Casual Labourer was engaged in infraction of the rules or if his engagement is in violation of the provisions of the Constitution, the said illegal engagement shall not be regularised.

9. The Hon'ble Supreme Court in the case of State of Karnataka vs. Umadevi ((2014) 4 SCC 40) dated 10.4.2006 has also held at para 48 as follows:-

"48. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequally as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

10. The Hon'ble Supreme Court in the case of State of Rajasthan vs. Daya Lal ((2014) 4 SCC 435) has considered the scope of regularisation of irregular or part time appointment in all possible eventualities and laid down well settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are 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 employee 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 and/or appointment or ineligible candidates cannot be regularised.

(ii)Even temporary, adhoc or daily wage service for a long number of years, let alone service for one or two years will not entitle such employee 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)

(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 continuance or part time temporary employees".

11. The Apex Court has held that where there is illegality in matters of recruitment, the appointment cannot be saved whereas, if it be only irregular, it could be. In the case of those who have not been selected without undergoing the process of open competitive selection, and not against any sanctioned post, the appointment has been termed as illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. In this regard, judgment of the Apex Court in **State of Karnataka vs M.L. Kesari, SLP © No. 5774 of 2006** decided on 03-08-2010 is relevant.

The Court in that case has held as under:-

Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, held as under:-

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant



posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date.

It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled :

- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
- (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

12. The applicant in the instant case was not sponsored through Employment Exchange and she was engaged without following the recruitment rules and



her engagement was not against sanctioned post. Further she has been employed only as a Part Time Contingent in two offices for less than 5 hours in each office and totally she is being employed daily for less than 8 hours only and she is not a full time employee which is one of the prerequisites for absorption as regular employee. The Transfer Certificate produced by the applicant shows that she has passed VII Std., from 'Public Private Day and Night School' at Vepery Chennai. She has not completed her middle school which is the required educational qualification for appointment as GDS. Further, verification of the certificates produced by her also proved futile as the school was closed down.

13. In the above facts and circumstances of the case and the Judgement of the Hon'ble Supreme Court in the cases referred to supra, I am of the view that the applicant has not made out a case for grant of the relief prayed for by him in the OA. In the result, the OA is devoid of merit and is liable to be dismissed and is accordingly dismissed.

14. No costs.