

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00653/2019

Monday, this the 18th day of November, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. T.S. Najimudeen, S/o. T.K. Saidu, aged 40 years,
Contingent Employee (Directorate of Revenue Intelligence),
Thozhuthingal House, Irumpupalam, Valara PO,
Idukki District – 685561 (Ph:9895786909).
2. C.T. Ajithkumar, S/o. Kandankutty, aged 47 years,
Contingent Employee (Directorate of Revenue Intelligence),
Chittedath Thazhath House, Karikenkulam, Karaparamba PO,
Kozhikode – 673 010 (Ph:974603699). **Applicants**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
Department of Revenue, North Block, New Delhi – 110 001.
2. Chairman, Central Board of Indirect Taxes and Customs,
North Block, New Delhi – 110 001.
3. Director General of Revenue Intelligence, D Block,
Indraprastha Bhavan, 7th Floor, I.P. Estate,
New Delhi – 110 002.
4. Additional Director General of Revenue Intelligence,
No. 1103, 13th Cross, Indira Nagar II Stage, Bengaluru – 560 038.
5. Additional Director of Revenue Intelligence, No. 19/1069-A,
Tali, Chalapuram PO, Kozhikode – 673 002.
6. Additional Director General of Revenue Intelligence,
Valakunnel, Kaithoth Road, Palarivattom,
Cochin – 682 025. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 11.11.2019 the Tribunal on

18.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “(i) To call for the records leading up to the issue of Annexure A27 and Annexure A28 and quash the same.
- (ii) To declare that the applicants are entitled for grant of temporary status and regularization.
- (iii) To direct the respondents to grant temporary status and regularization to the applicants in their respective offices where they are employed at present, within a stipulated period with all consequential benefits.
- (iv) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
- (v) Grant cost of this OA.”

2. The brief facts of the case are that the applicants are working as contingent employees under the 6th and 5th respondents. The applicants are being paid wages based on the orders of the Government of Kerala from time to time. Although the applicants were recruited for sweeping and cleaning the office premises they were asked to do the duty of Sweeper, Sepoy and Driver. Apart from that they attended the work of photo copying, dispatch work and all other duties which are generally attended by a Sepoy. The applicants' services were utilized as full time employees. In addition to these duties occasionally applicants' services are also being utilized for gathering intelligence about the smuggling and tax evasion activities. The applicants were doing the duties sincerely and honestly to the utmost satisfaction of their superiors and were hoping that they would be regularized shortly. The applicants submitted representations for

regularization which was rejected by the respondents.

3. The applicants relied upon the judgment of the apex court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* – (2006) 4 SCC 1 wherein in paragraph 53 of the said judgment the regularization of casual employees were considered. On the basis of the above judgment of the apex court in *Uma Devi's* case (supra) the apex court in SLP(C) No. 15774/2006 – *State of Karnataka & Ors. v. M.L. Kesari & Ors.* had ordered for regularization of casual employees who had worked for more than 10 years. Further in an identical matter the casual employees working in the Bangalore zone of the Customs and Central Excise approached the Bangalore Bench of the Tribunal praying for regularization of their services and the OAs were allowed. The respondents challenged the order passed in the OAs before the Hon'ble High Court of Karnataka. The Hon'ble High Court dismissed the petitions directing the respondents to implement the order of the Bangalore Bench of the Tribunal within two months. The applicants have relied upon several other matters decided by various Benches of the Tribunal and the Hon'ble Supreme Court.

4. The applicants submitted that those appointed as casual labourers during 2002 i.e. much after the appointment of the applicants have been granted temporary status and as such denying the same benefit to the applicants is a clear discrimination which is a violation of Articles 14 & 16 of the Constitution of India. Aggrieved the applicants have filed the present OA.

5. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC who filed a reply statement contending that the applicants are working as contingent employee in DRI Cochin and DRI Calicut respectively through a contractor outsourced by the Department. The applicants have filed OA No. 180/681/2017 before this Tribunal for grant of temporary status and regularization in the respective offices. This Tribunal directed the respondents to consider the case of the applicants and pass a speaking order. The respondents rejected the claim of the applicants observing that none of the DOPT schemes regarding grant of temporary status and regularization applies to the applicants and that all casual employees who were working as on 1.9.1993 were only entitled for temporary status. These applicants were not working when the scheme was brought into effect. The applicants were engaged by a contractor to whom works were out sourced and wages were paid to them by contractor according to the existing guidelines issued by the Government of Kerala. The applicants are not working against any sanctioned post and are not engaged by a due process of selection. Therefore, the judgment of the apex court in *Umadevi's* case (supra) is not applicable in this case. Respondents pray for dismissing the OA.

6. Heard Shri C.S.G. Nair, learned counsel appearing for the applicants and Shri N. Anilkumar, SCGSC learned counsel appearing for the respondents. Perused the record.

7. The basic contention of the applicants is that since they are working with the respondents from 15.1.1998 and 1.2.1994 respectively, they are entitled for grant of temporary status and regularization. In this regard we find that the applicants had earlier approached this Tribunal by filing OA No. 180/681/2017 seeking temporary status and regularization. The said OA was disposed of on 9th October, 2018 with a direction to the respondents to consider the representations filed by the applicants in terms of the Bangalore Bench decision relied upon therein and to pass a speaking order within 60 days. The respondents while implementing the above order rejected the case of the applicants stating that the applicants were not party to the proceedings before the Bangalore Bench of the Tribunal and that none of the DOPT schemes regarding grant of temporary status and regularization applies to the applicants.

8. Now the respondents have taken a new stand in their reply statement at paragraph 6 that the applicants were engaged by a Contractor to whom works were out sourced and wages were paid to them by the Contractor. However, in the impugned orders such a ground was not been taken by the respondents while rejecting the claim of the applicants. On perusal of Annexures A1 and A2 it is clearly mentioned that the applicants were appointed as contingent employee for sweeping office premises and their appointment is purely temporary and is liable to be terminated at any time without notice. The respondents have not denied the fact that the applicants were not working from 15.1.1998 and 1.2.1994 respectively on contingent basis. Further on perusal of the Annexures produced by the applicants it is

clear that in addition to the the work of sweeping the applicants used to do the works relating to taking of photocopies, duties of Sepoy, driving duty etc. The Hon'ble apex court in *Umadevi's* (3) case (supra) held as under:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 above referred 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 regularize 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 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. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Further the apex court in *Ashwani Kumar v. State of Bihar* – (1997) 2 SCC

1 held as under:

“14. In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent

authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment.”

9. Thus, we find that the applicants are exactly similar to the applicants in OAs Nos. 170/907/2015 to 170/912/2015 of Bengaluru Bench of this Tribunal which was upheld by the Hon'ble High Court of Karnataka in WP Nos. 42814 of 2016 and connected cases. Therefore, ends of justice would be met, if we direct the respondents to consider grant of temporary status and regularization to the applicants in view of the apex court judgment in *Umadevi's* (3) case (supra) as well as the order passed by the Bengaluru Bench of the Tribunal in OAs Nos. 170/907/2015 to 170/912/2015 within a period of three months from the date of receipt of a copy of this order. Ordered accordingly.

10. The Original Application is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00653/2019

APPLICANTS' ANNEXURES

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| <u>Annexure A1</u> | - True copy of the appointment order No. DRI/CLT/ESTT/94 dt. 1.2.1994. |
| <u>Annexure A2</u> | - True copy of order No. DRI/CHN/Estt./98 dt. 30.3.1998. |
| <u>Annexure A3</u> | - True copy of letter No. DRI/CRU/Estt./2004 dt. 30.12.2004 issued by the 5 th respondent. |
| <u>Annexure A4</u> | - True copy of letter F. No. DRI/CRU/ESTT/CONT/95/398 dt. 11.10.2001 issued by the 5 th respondent. |
| <u>Annexure A5</u> | - True copy of letter DRIF No. G-25017/1/00-BG dt. 16.10.2001 issued by the 4 th respondent. |
| <u>Annexure A6</u> | - True copy of letter F. No. DRI/CRU/ADMN/2011 dt. 28.9.2011 issued by the 5 th respondent. |
| <u>Annexure A7</u> | - True copy of letter F. No. DRI/CHN/ADMN11 dt. 11.10.2011 issued by the 6 th respondent. |
| <u>Annexure A8</u> | - True copy of common judgment in WP(C) Nos. 42814/2016 and 55957-61/2016 dt. 15.11.2016. |
| <u>Annexure A9</u> | - True copy of order dt. 20.10.2008 in OA No. 145/2008. |
| <u>Annexure A10</u> | - True copy of order dt. 1.9.2014 of the Hon'ble Supreme Court. |
| <u>Annexure A11</u> | - True copy of order dt. 5.12.2014 of the Hon'ble Supreme Court. |
| <u>Annexure A12</u> | - True copy of order No. 33/2017 dt. 15.3.2017 issued by the Chief Commissioner of Central Excise, Bangalore Zone. |
| <u>Annexure A13</u> | - True copy of order No. 73/2017 dt. 28.4.2017 issued by the Chief Commissioner of Central Excise, Bangalore zone. |
| <u>Annexure A14</u> | - True copy of the letter F. No. C.18013/64/2018.Ad.III B dt. 14.12.2018 issued by the 1 st respondent. |

- Annexure A15** - True copy of the establishment order (NGO) No. 14/19 dt. 16.1.2019 issued by the Principal Commissioner of Central Tax, Hyderabad.
- Annexure A16** - True copy of the establishment order (NGO) dt. 24/19 dt. 23.1.2019 issued by the Principal Commissioner of Central Tax Hyderabad.
- Annexure A17** - True copy of the establishment order (NGO) dt. 44/2019 dt. 1.4.2019 issued by the Principal Commissioner of Central Tax Hyderabad.
- Annexure A18** - True copy of the establishment order (NGO) No. 45/2019 dt. 1.4.2019 issued by the Principal Commissioner of Central Tax Hyderabad.
- Annexure A19** - True copy of the establishment order (NGO) No. 46/2019 dt. 1.4.2019 issued by the Principal Commissioner of Central Tax Hyderabad.
- Annexure A20** - True copy of letter dt. 6.6.2017 along with the representation.
- Annexure A21** - True copy of letter along with the representation submitted by the 1st applicant was forwarded to the 4th respondent on 26.5.2017 by the 6th respondent.
- Annexure A22** - True copy of the letter No. DRI/CHN/Admn/15 dt. 17.12.2015 issued by the Assistant Director in 6th respondent's office.
- Annexure A23** - True copy of the letter No. DRI/CHN/Admn/15 dt. 17.12.2015.
- Annexure A24** - True copy of the the DRI F. No. A-22015/04/2016-Estt.Prt.I) dt. 4.1.2017 issued by the 3rd respondent.
- Annexure A25** - True copy of the letter No. DRI/BZU/CHN/Admn./2017 dt. 26.5.2017 issued by the 5th respondent forwarding the representation dt. 26.5.2017.
- Annexure A26** - True copy of the order dt. 9.10.2018 in OA No. 681/2017.
- Annexure A27** - True copy of the order F. No. DRI/CHN/Misc./2017 dt. 4.4.2019 issued by the 6th respondent.

Annexure A28 - True copy of the order F. No. DRI/CHN/Misc./2017 dt. 24.6.2019 issued by the 6th respondent.

Annexure A29 - True copy of the order dt. 1.7.2019 in CP(C) 35/2019.

RESPONDENTS' ANNEXURES

Annexure R-1 - True copy of the scheme of DoP&T dated ____, 1993.

Annexure R-2 - True copy of clarification letter dated 7.2.2002.

Annexure R-3 - True copy of letter issued by Board's in this regard vide F. No. C18013/3-2015. Ad.IIB dated 14.3.2017.

Annexure R-4 - True copy of the letter F. No. C-18013/67/2018-Ad.IIB dated 10.12.2018.

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