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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 834 of 2013

Reserved on : 18.9.2019

Date of order: 05.11.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Bunty Routh,
Aged about 27 years,
Son of Sri Jayanta Kumar Routh,
Residing at 33 Park Lane,
Kolkata - 700 016.

... Applicant

VERSUS

1. The Union of India,
Service through the Secretary,
Ministry of Law and Justice,
North Block,
New Delhi - 110 001.
2. The Hon'ble President,
Income Tax Appellate Tribunal,
Central Government Officers Building,
4th Floor, Mahatma Karve Marg,
Mumbai - 400 020.
3. The Vice-President,
Income Tax Appellate Tribunal,
Kolkata Benches,
Kolkata, 225/C,
Acharya Jagadish Chandra Bose Road,
Kolkata - 700 020.
4. The Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches,
Kolkata 225/C,
Acharya Jagadish Chandra Bose Road,
Kolkata - 700 020.

... Respondents

For the Applicant : Mr. S. Samanta, Counsel
Mr. P.K. Mondal, Counsel

For the Respondents : Mr. T.K. Chatterjee, Counsel

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ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (a) Direction do issue quashing and setting aside the purported order dated 9th February, 2012 issued under the signature of the Hon'ble President, Income Tax Appellate Tribunal, Mumbai being Annexure "A-4" hereto to outsource the job of Safaiwala for which an extant sanctioned post remains vacant and thereupon to put back the applicant in service in the Income Tax Appellate Tribunal, Kolkata Benches, Kolkata;
- (b) Direction do issue directing the respondent authorities to regularize the applicant in the sanctioned post of Group D (presently "Group-C" multi-tasking staff) in the Income Tax Appellate Tribunal, Kolkata Benches, Kolkata;
- (c) Injunction do issue restraining the respondent authorities from granting appointment to any candidate in the sanctioned post of Group D (presently "Group-C" multi-tasking staff) in the Income Tax Appellate Tribunal, Kolkata Benches, Kolkata without first appointing the applicant;
- (d) Injunction do issue upon the respondents restraining them, their men/agents/subordinates from acting in any manner or any further manner on the basis of the order dated 9th February, 2012 issued under the signature of the Hon'ble President of the Income Tax Appellate Tribunal, Mumbai being Annexure "A-4" pending disposal of the instant application;
- (e) Direction do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders therein;
- (f) Cost and costs incidental hereto;
- (g) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The submissions of the applicant, as articulated through his Ld. Counsel, is:

(a) that the applicant had joined the respondent authorities w.e.f. 30.11.2006 in the post of Sweeper on adhoc basis consequent to interview to select the applicant in the said post, and, that, the applicant's claim had been forwarded by the Local Employment Exchange towards the said purpose.

(b) That a regular post of Sweeper fell vacant since 11.11.2010 but was not filled up thereafter.

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(c) That, the respondent No. 2, who is the President, ITAT, while deciding on a proposal for regularization/adhoc appointment in the post of erstwhile Gr. 'D' from Daily Wagers working at various Benches of the ITAT, directed that there should be no more Daily Wagers but the work should be outsourced to employment agents. On the basis of such directions, the applicant's services have been terminated w.e.f. 30.4.2012.

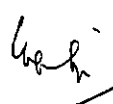
(d) Presently, the applicant is serving in the said post of Safaiwala through an outsourced agency but his various representations, praying for his reengagement with the respondent authorities, remain pending for a favourable decision.

Accordingly, being aggrieved, the applicant has approached the Tribunal praying for aforementioned relief.

The applicant has brought to the notice of the Tribunal in the form of a supplementary affidavit, that, on 8.4.2008, the respondent authorities had appointed a number of persons to officiate as Peon, Chowkidar, Farash, Gardener on purely adhoc basis for a period of six months in different Benches of the Tribunal and, that, on 23.7.2013, another memo has been issued by the respondent authorities whereby some of the employees earlier appointed to officiate by memo dated 8.4.2008, have been allowed to officiate on adhoc basis till such posts are filled up on a regular basis.

As there is one sanctioned and vacant post of Safaiwala in the Kolkata Bench, the applicant claims that he deserves to be treated at par with other employees in favour of whom such orders were passed in 2008 and 2013 respectively.

The applicant has advanced, inter alia, the following grounds in support of his claim:-



- (i) That, as the applicant was engaged in the Income Tax Appellate Tribunal, Kolkata Bench, as per settled law, he should have been regularized in the said post instead of being discontinued in terms of an executive order.
- (ii) That, although there is a regular and vacant post of Sweeper at Kolkata Bench of the ITAT, the fact that the deployment has been outsourced to an external agency is not sustainable in law.

4. The respondents, per contra, have argued as follows:-

- (a) That, the respondent authorities had called for names from the Employment Exchange for Sweeper on Daily Wage Basis (No work no pay). The applicant was engaged in that post for an initial period of three months, w.e.f. 1.12.2006 and, that, although his service was extended from time to time on daily wage basis, such extension was not continuous in nature.
- (b) While deciding on a proposal for regular/adhoc appointment to the erstwhile Gr. D posts from the existing Daily Wagers working in the various Benches of the Tribunal, the President had directed that no Daily Wagers should be engaged by the Tribunal but their functions are to be outsourced through employment agents. Accordingly, the services of the applicant were terminated vide orders dated 30.4.2012. The applicant, however, continues to perform the work of Safaiwala through outsourced agents.

5. The applicant has prayed for quashing of the orders dated 9.2.2012 (Annexure A-4 to the O.A.) whereby the Respondent No. 2's directions on outsourcing the service of Safaiwalas through Employment Agents was communicated to various Benches of the ITAT. The applicant has also prayed for his regularization in the purportedly regular sanctioned post

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of Safaiwala in the Kolkata Bench as well as for restraining the respondent authorities for granting appointment to any other candidate in the regular post.

In his representation dated 28.5.2012 (Annexure A-6 to the O.A.), however, the applicant has only prayed for being reinstated at the office of ITAT, Kolkata Bench, ventilating that his termination orders dated 1.5.2012 has rendered him unemployed subjecting him thereby to a penurious situation. To the contrary, in his pleadings, the applicant has confirmed that he is continuing to work as Safaiwala in Kolkata Bench of ITAT through the outsourced agents. Hence, what we decipher from the contradictory averments is that the applicant is not exactly unemployed, but that, at least till the date of filing of the Original Application, he continued to function as a Safaiwala, having been engaged by the outsourced agency.

Accordingly, the applicants prayers for (a) quashing of the orders of Respondent No. 2 as conveyed vide memorandum dated 9.12.2012 and (b) consequent prayer of the applicant for regularization in the sanctioned post of Safaiwala, remains to be decided upon in the instant O.A.

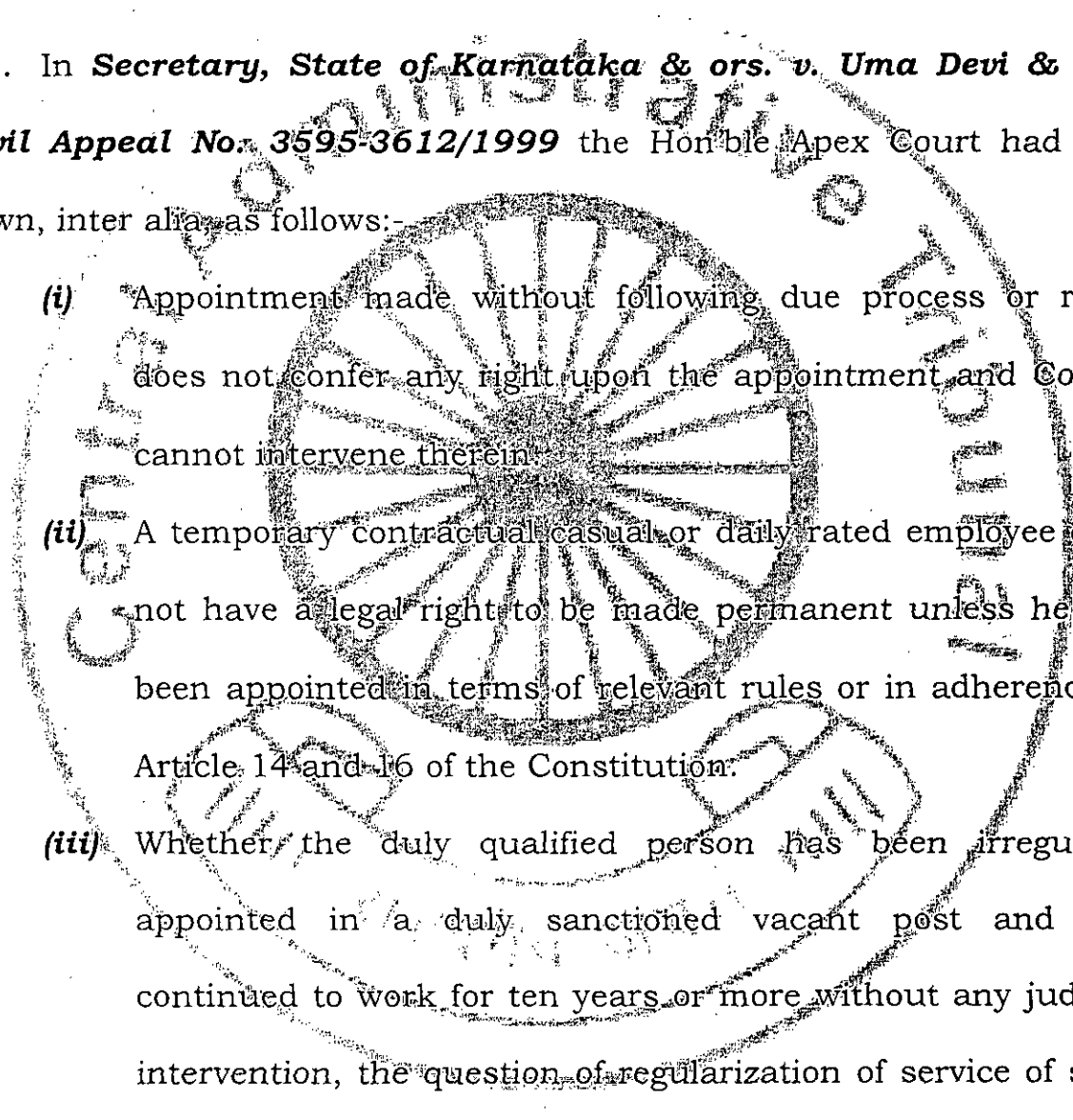
6.1. At the outset, we would examine as to whether the applicant has a right to claim regularization in the office of the respondent authorities, as prayed for in the relief. The documents that the applicant has submitted in his support are an interview letter dated 8.11.2006, his Employment Exchange Card, his caste certificate, his registration certificate under the West Bengal Board of Secondary Education, his school leaving certificate (all collectively annexed as A-1 to the O.A.). The applicant's initial engagement order dated 30.11.2006 as well as photocopies of note-

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sheets vide which his engagement as Safaiwala was periodically extended have also been annexed in his support.

All of the above documents reinforce the assertion of the respondent authorities that the applicant was actually a daily wager while performing the duties of Safaiwala with the respondent authorities and that he was not appointed to the post of Sweeper on adhoc basis as claimed by the applicant in the O.A.

6.2. In **Secretary, State of Karnataka & ors. v. Uma Devi & ors. Civil Appeal No. 3595-3612/1999** the Hon'ble Apex Court had laid down, inter alia, as follows:-

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- (i) Appointment made without following due process or rules does not confer any right upon the appointment and Courts cannot intervene therein.
 - (ii) A temporary contractual casual or daily rated employee does not have a legal right to be made permanent unless he has been appointed in terms of relevant rules or in adherence to Article 14 and 16 of the Constitution.
 - (iii) Whether the duly qualified person has been irregularly appointed in a duly sanctioned vacant post and has continued to work for ten years or more without any judicial intervention, the question of regularization of service of such employees has been considered on merits.

In **O.A. No. 912 and 961 of 1992 (Smt. Sakkubai and anr. v. The Secretary, Ministry of Communications, New Delhi & ors.)**, this Tribunal had held that part time employees functioning as Full time Casual Workers are entitled to temporary status. In the context of the ratio as enunciated in the above judgments, we

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would proceed to examine the case of the applicant and we infer as follows:-

- (a) The applicant was not engaged after due observance of the recruitment rules in the post of erstwhile Gr. 'D' by the respondent authorities.
- (b) Admittedly, the applicant is a Daily Rated employee and, hence, he does not have a legal right to be made permanent as he has not been appointed in terms of all the relevant rules or in adherence to Article 14 or 16 of the Constitution of India.
- (c) The applicant has not continued to work for 10 years or more as because he started working as a Daily Wager from November, 2006 and his appointment was terminated w.e.f. 1st May, 2012. Accordingly, the applicant has rendered much less than 10 years to deserve consideration for regularization on merit.
- (d) The applicant was never engaged as a Part Time Casual or Full Time Casual Worker and does not have a claim towards temporary status.

In K.K. Suresh & anr. v. Food Corporation of India & others (2019) 2 SCC (L&S) 124 the Hon'ble Apex Court had ruled that any entitlement to regularization has to necessarily be based on a employer employee relationship.

The applicant being a daily wager, has not been able to adduce any evidence to establish that there was an employer employee relationship between him and the respondents.

Accordingly, in our considered view, the applicant has no right to claim regularization in terms of ratio in **Uma Devi (supra)**. Accordingly, his claim for regularization abates.

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6.3. The Respondent No. 2 has decided that there should be no more daily wagers but the work performed by daily wager should be outsourced through an employment agency. We do not find any legal infirmity in such orders as direct engagement of daily wagers by respondent authorities vis-à-vis engagement of such daily wagers through outsourced agency is a policy decision of the respondent authorities and the scope of judicial intervention in such policy decisions is rather limited. It has been consistently held by the Apex Court that policy decision of the Government regarding recruitment is not amenable to judicial review unless the same is arbitrary. The Respondent No. 2, is the competent authority to decide on policy matters on recruitment of Group D staff and also engagement thereof on temporary basis. The decision has not been challenged on grounds of malafide, as vitiated by non-application of mind or influenced by extraneous reasons. Hence, following the ratio in **Official Liquidator v. Dayanand (2008) 10 SCC 1**, and **State of Orissa v. Bhikari Charan Khuntia (2003) 9 SCC 243**, we would refrain from interfering with the decision of respondent No. 2, who is the President, ITAT.

6.4. The applicant has also assailed the decision of the respondent authorities in keeping the sanctioned post of the Sweeper vacant and outsourcing the functions of engagement of a Sweeper to external agencies. The Hon'ble Apex Court in **LT. CDR. M. Ramesh v. Union of India & others, (2019) 1 Supreme Court Cases (L&S) 213** has ruled that the decision to fill up vacant posts is essentially the prerogative of the government and that the State is not under duty to fill up vacancies if there are bonafide, justifiable and appropriate reasons thereof.

6.5. In his rejoinder, the applicant has brought forth documents before us to refer to extension of the adhoc services of certain employees of ITAT

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till filling up such posts on regular basis. The applicant claims similarity of circumstances with such employees although he has failed to agitate his claim at the material point of time.

7. We would hence accord the applicant liberty to prefer a comprehensive representation before the competent respondent authority establishing the similarity of his circumstances with the employees (referred to in his rejoinder), within four weeks of receipt of this order, and, in the event such representation is preferred, the respondent authorities may decide on the same in accordance with law and convey their decisions to the applicant within 12 weeks of receipt of such representation.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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