

(2018) 04 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 2211 Of 2015

Anita And Ors

APPELLANT

Vs

Union Of India And others

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 04 CAT CK 0029

Hon'ble Judges : K.N. Shrivastava, Member (A)

Bench : Single Bench

Advocate : Manjeet Singh Reen, Y P Singh

Final Decision : Dismissed

Judgement

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following main relief:-

"8.1 That this Hon"ble Tribunal may graciously be pleased to allow this Original Application and direct the respondents to regularize the services of the applicants on the above mentioned posts in terms of DOPT OM dated 11.12.2006 issued in compliance of the directions of the Apex Court in the case of Uma Devi (supra) as well as M L Keseri (supra) and also recent judgment of the Hon"ble Delhi High Court in the case of Rajender Singh (supra) with all consequential benefits."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant Nos. 1, 2 & 3 were appointed as Safaiwali in the years 1993, 1998 and 1999 respectively, whereas the applicant Nos. 4 & 5 were appointed as Mali and Khallasi in the years 2000 and 2004 respectively in Central Water Commission (CWC) - respondent organization, on ad hoc basis and they were to be paid lump sum monthly emoluments, as indicated in their respective appointment letters. They have been praying for regularization in service. They

have submitted their individual representations but no action has been taken on such representations by the respondents.

2.2 It is contended by the applicants that the Hon"ble Supreme Court in the case of Secretary, State of Karnataka & others v. Umadevi & others, (2006) 4 SCC 1 has directed the Union of India and State Governments and their instrumentalities to take steps to regularize, as one time measure, the services of all irregularly appointed persons, who are duly qualified in terms of the statutory rules for the post and who have worked for more than 10 years or more in the duly sanctioned post. It is contended that based on the ibid judgment of the Hon"ble Supreme Court, the Department of Personnel & Training (DoPT) has issued an Office Memorandum (O.M.) dated 11.12.2006 and that in terms of the said O.M., they are entitled for regularization in service.

2.3 It is further contended that as per the dictum of Hon"ble Apex Court in State of Karnataka & others v. M. L. Kesari & others, (2010) 9 SCC 247, the applicants ought to have been considered for regularization suo motu by the respondents having regards to the length of service rendered by them.

2.4 The applicants' next contention is that two of their juniors, namely, Mr. Raghav Kumar Jha, working as Khallasi and Mr. Chaman Lal, working as Mali, have been regularized but their cases for regularization have not been considered by the respondents, and thus equality principle enshrined under Articles 14 & 16 of the Constitution have been violated in their cases.

Aggrieved by the non-consideration of their request for regularization of their services, the applicants have approached this Tribunal in the instant O.A. praying for the relief, as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which broadly they have averred as under:-

3.1 The applicants are not casual employees of the respondents; they are only part time workers. They are working at Faridabad and New Delhi Offices of CWC and are being paid as per the rates fixed by the Labour Department of Govt. of NCT of Delhi.

3.2 The applicants are not engaged for full time and they are working intermittently. They have not completed the mandatory 240 days of working per year for complete working hours since they are part time employees.

3.3 The services of the applicant Nos. 1, 3, 4 & 5 are being utilized in the CWC office at Faridabad, whereas the services of applicant No.2 are being utilized in the office of Sub-Divisional Engineer, CSSD, New Delhi. The applicants have not been engaged against any sanctioned posts.

3.4 Mr. Raghav Kumar Jha and Mr. Chaman Lal were regularized as per the judgment of this Tribunal in O.A. Nos. 223/1992 and other connected O.As. vide order dated 10.02.1994 (Annexure R-13) and as per DoPT O.M. dated

11.01.1994 (Annexure R-14). Both of them were casual employees.

4. The applicants have filed a rejoinder to the reply filed on behalf of respondents, in which, more or less, the averments made in the O.A. have been reiterated.

5. On completion of pleadings, the case was taken up for hearing the arguments of both the parties on 28.11.2017. Arguments of Mr. Manjeet Singh Reen, learned counsel for applicants and that of Mr. Y P Singh, learned counsel for respondents were heard.

6. Mr. Manjeet Singh Reen, learned counsel for applicants submitted that the applicants are entitled for regularization in terms of the law laid down by Hon"ble Apex Court in Umadevi's case (supra) since they have rendered more than 10 years of service. He further contended that the Hon"ble High Court of Madras in Tmt. R. Arai v. Director of School Education, Chennai & another (W.P. No.12398/2007), dealing with the case of a "part-time sweeper" employed at Government Girls Higher Secondary School, Attur, Salem District, and relying on its earlier judgment in M. Kumar v. The Director of School Education & others (W.P. No.18126/2009) decided on 29.07.2008, has delivered the judgment dated 10.12.2011; the operative part of which reads as under:-

"20. In these circumstances, I am of the view that the matter is squarely covered by the aforesaid decisions of this Court. When the Government regularised the services of those persons and also other persons thereafter, who were similarly situated as that of the petitioner, as contended by the learned counsel for the petitioner, there is no reason to deny the regularisation to the petitioner.

21. For all the aforesaid reasons, the writ petition is allowed and the impugned order is quashed and a direction is issued to the first respondent to regularise the services of the petitioner on completion of ten years of service with all monetary benefits. The first respondent is also directed to undertake the said exercise within a period of eight weeks from the date of receipt of copy of this Order. No costs."

7. Mr. Reen further contended that in an identical matter, the Hon"ble Apex Court in Prem Ram v. Managing Director, Uttarakhand Pwya Jal & Nigam Dehradun & others (Civil Appeal No.4474/2015) decided on 15.05.2015 had ordered for regularization of the petitioner therein, who was engaged on daily wages, on the ground of parity since persons appointed later than the petitioner were regularized.

8. Mr. Reen further drew my attention to yet another judgment of Hon"ble Apex Court in Malathi Das (retired) now P.B. Mahishy & others v. Suresh & others, (2014) 13 SCC 249 to buttress his contention.

He particularly drew my attention to the following portion of the said judgment:-

"12. It is not in dispute that the original batch of employees who had filed Writ

Petitions Nos. 33541-71 of 1998 on the basis of which the writ petitions filed by the respondents herein (WPs Nos. 39117 -76 of 1999) were allowed by the order dated 15-12-1999 have been regularised. It is also not in dispute that out of the 445 employees who had filed Writ Petitions Nos. 39117-76 of 1999, by separate government orders, the service of 161, 64 and 55 employees have been regularised in three batches. The records placed before the Court would indicate that 7 other persons have been regularised during the pendency of the present appeal. In a situation where a Scheme had been framed on 29-12-2005 to give effect to the order of the High Court dated 15-12-1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularised pursuant thereto the action of the appellants in not granting regularisation to the present respondents cannot appear to be sound or justified. The fact that the regularisation of 55 employees, similarly situated to the present respondents, was made on 18-4-2006 i.e after the decision of this Court in Umadevi (3) is also not in serious dispute though Shri Bhat, learned Senior Counsel for the appellants, has tried to contend that the said regularisations were made prior to the decision in Umadevi (3). The date of the order of regularisation of the 55 persons i.e 18-4-2006 will leave no doubt or ambiguity in the matter.

13. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularisation on the date of the decision in Umadevi (3) is required to be dealt with in accordance with the conditions stipulated in para 53 of Umadevi (3) inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularised by the State and in case of some of them such regularisation being after the decision in Umadevi (3) we are of the view that the stand taken by the appellants in refusing regularisation to the respondents cannot be countenanced. However, as the said stand of the appellants stems from their perception and understanding of the decision in Umadevi (3) we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty-bound to regularise the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order."

9. Per contra, Mr. Y P Singh, learned counsel for respondents submitted that the two employees, namely, Mr. Raghav Kumar Jha and Mr. Chaman Lal have been regularized as per the Court orders. Unlike these applicants, those two employees were engaged as casual workers with full time job.

10. I have considered the arguments of learned counsel for the parties and have also perused the pleadings.

11. The applicants are seeking their regularization in service in accordance with the dictum of Hon"ble Apex Court in Umadevi's case (supra). For better appreciation, the relevant portion from Umadevi's case is extracted below:-

"44. 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.

12. It is quite clear from Umadevi's case that casual workers are eligible for regularization if they have rendered more than 10 years of service and have been engaged against regular posts. The DoPT O.M. dated 11.12.2006 issued on the basis of the said judgment, inter alia, states as under:-

"The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No. 49014/2/86 Estt.(C) dated 7th June, 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post can not be created. Attention is also invited to this Department's OM No. 28036/1/2001-Estt. (D) dated 23 rd July, 2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market.

2. A Constitution bench of the Supreme Court in civil appeal No. 3595-3612/1999 etc. in the case of Secretary State of Karnataka and Ors. Vs. Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgement dated 10.4.2006 has directed that 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 are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover

of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

3. Accordingly the copy of the above judgement is forwarded to all Ministries/ Departments for implementation of the aforesaid direction of the Supreme Court."

13. The Hon"ble Supreme Court in Prem Ram's case (supra) was dealing with the case of petitioner therein, who was employed as casual worker in Uttrakhand Pey Jal Nigam but his services were terminated. The said termination was held illegal by the Labour Court, as a result of which he was ordered to be placed back in service. In the interregnum, some casual workers, appointed later than the petitioner, were regularized in terms of the ratio of law laid down in Umadevi's case. The petitioner therein was seeking his regularization, which was not considered by the respondents, whereas some daily wagers, who were junior to him, were regularized. The respondents had tried to say that the petitioner therein was employed on daily wage basis, whereas his juniors, who were regularized, were engaged temporarily on work charged establishment. The Hon"ble Apex Court, however, demolished this logic of the respondents therein and said that there is no perceptible difference between a daily wage employee and a work charged employee. Accordingly, the Hon"ble Court ordered for regularization of the petitioner on the principle of parity.

14. In the present case, I find that these applicants have not been engaged against regular vacancies. Applicant Nos. 1, 2 & 3 have been engaged as Safaiwalis for just 4 hours per day, whereas applicant Nos. 4 & 5 have been engaged for similar duration as Mali/Khallasi. Their engagement cannot be called as a "full time engagement". They have also not completed 240 days of full work in a year. Hence, I am of the view that these applicants are not eligible for grant of the benefits of the dictum in Umadevi's case (supra). The judgments relied upon by the applicants do not apply to the instant case on the issue of facts. As noted hereinabove, one of the prime conditions for regularization is that the irregular appointments should have been made against sanctioned posts. The applicants have failed to adduce any material to indicate that their engagement had been against regular posts.

15. In the conspectus of discussions in the preceding paragraphs, I do not find any merit in this O.A. The O.A., being bereft of merit, is accordingly dismissed without any order as to costs.