
(2018) 11 CAT CK 0016
In the Central Administrative Tribunal
Case No : Original Application No. 063, 00648 Of 2017

Devi Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 11 CAT CK 0016

Hon'ble Judges : Sanjeev Kaushik, J;Ajanta Dayalan, J

Bench : Division Bench

Advocate : P.M. Kansal, K.K. Thakur

Final Decision : Dismissed

Judgement

1. The present Original Application (O.A.) has been filed by applicant Devi Singh and 10 others feeling aggrieved by impugned order dated 28.12.2016 alongwith letter dated 27.8.2013 (Annexure A-1) rejecting their claim for conversion of part time casual labourers to full time casual labourers. They have also sought direction to convert them into full time casual labourers against regular Mazdoor/Group-D posts w.e.f. 1.10.2000 or the date their juniors have been so converted and also to regularize their services. They have also prayed for consequential benefits of the judgments of the Courts as well as this Tribunal annexed as Annexures A-10 to A-15.

2. The applicants' case is that they were appointed as part time casual labourers during 1994-1999 in the Department of Telecommunication and are continuing as such. They perform perennial nature of duties from 9 a.m. to 5.30 p.m. These duties are similar to those performed by the regular employees. They feature in the part time workers list made in Mandi SSA as being engaged prior to 1.10.2000. The respondent department on 16.9.1999 (Annexure A-8) decided to convert all part time casual labourers who were working for 4 hours or more per day into full time casual labourers. Further, on 25.8.2000 (Annexure A-7), the respondent department decided to convert all part time casual labourers

working for less than 4 hours per day into full time casual labourers. With the corporatization of the Department of Telecommunications and formation of Bharat Sanchar Nigam Limited, on 29.9.2000 (Annexure A-6), the department stipulated that regularization will take place in the following order:

'(1) All casual labourers who have been granted temporary status up to the issuance of orders No. 269-4/93-STN-II dated 12.2.99, circulated vide letter No. 269-13/99-STN-II dated 12.2.99 and further vide letter No. 269-13/99-STN-II dated 9.6.2000.

(2) All full time casual labourers as indicated in Annexure.

(3) All part time casual labourers who were working for four or more hours per day and converted into full time casual labourers vide letter No. 269-13/99-STN-II dated 16.9.99.

(4) All part time casual labourers who were working for less than four hours per day and were converted into full time casual labourers vide letter No. 269-13/99-STN-II dated 25.8.2000.

(5) All Ayas and Supervisors converted into full time casual labourers as per order No. 269-10/97-STN-II dated 29.9.2000.'

All the casual labourers indicated from (1) to (5) were to be adjusted against available vacancies of regular mazdoors. Chief General Managers were authorised to create posts as per prescribed norms and to that extent, prescribed ceiling for the circle was to stand enhanced. Further, both casual labourers working in the department and those granted temporary status had to be treated equal for the purpose of regularisation.

3. The Nigam was incorporated with effect from 1.10.2000 and has been following these policy directives. It has also been extending the benefit of conversion into full time casual labourers from time to time. Accordingly, on 16.5.2012 (Annexure A-4), options were called from eligible part time safai workers who after conversion to full time casual labourers were willing for posting in other SSAs in H.P. (Telecom) Circle. The applicants submitted their options which were forwarded to the concerned authorities. On 6. 7.2012 (Annexure A-3), information was also sought in respect of the applicants and others to ascertain their eligibility for conversion. Since no further action was taken, on 3.4.2014 (Annexure A-2), a legal notice was served by the applicants. In response, vide letter dated 21.4.2014 (Annexure A-1), the respondents admitted that they are required to follow the directions contained in letters dated 16.9.1999 and 25.8.2000. But, they also admitted that one Lal Ram has been so converted. According to the applicants, Lal Ram joined only on 20.8.1997 - that is much after the applicants at serial no. 1 to 10. The applicants filed O.A. No. 63/146/2014 in this Tribunal seeking conversion and regularisation of their service which was decided on 8.9.2015 (Annexure A-1/B). Thereafter, the respondents have passed the impugned order rejecting the claim of the

applicants stating that after the decision of the Supreme Court in the case of Secretary State of Karnataka vs Uma Devi, regularisation of casual labourers including the rules on conversation of part time to full time has become legally untenable and neither any instruction for conversation nor any such case was under consideration by BSNL Head Quarters (Annexure A-1). Another O.A. earlier filed by the applicants, no. 63/296/2017 was withdrawn due to technical defects with liberty to file afresh on the same cause of action, after removal of defects and better particulars. Hence the present O.A.

4. The respondents have contested the claim of the applicants. The respondents have referred to various judgments of the Hon'ble Apex Court including Secretary, State of Karnataka and Ors. vs. Uma Devi & Ors. in support of their contention that 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 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. However, if such appointments themselves are in infraction of the rules or are in violation of the provisions of the Constitution, illegality cannot be regularized. Accordingly, the present applicants are not entitled for regularisation as they were employed as contingent paid employees in 1995 and not against any clear cut vacancy which is a must requirement for regularisation.

5. The respondents have stated that the applicants were orally engaged, and not appointed, for part time casual work of sweeping which mostly took 30 to 40 minutes per day. They have denied that the applicants are working from 9.30 a.m. to 5.30 p.m. as regular trained employees are posted in exchanges for maintenance work. It is further stated that policy decision dated 16.9.1999 (Annexure A-8) was to convert only those part time casual labourers who were working for four or more hours per day into full time casual labourer. The same was a one-time relaxation. Further, as the applicants were not working for four or more hours per day, they were not covered under that decision. The decision dated 25. 8.2000 to convert part time casual labourer into full time casual labourers was with certain conditions including one time relaxation. As per this order, part time casual labourers with less than 4 hours of duty per day and who had worked for 240 days in the preceding 12 months were to be converted into full time casual labourers to the extent of available vacancies in Group-D cadre.

6. The respondents have further stated that 9 senior most part time casual labourers were converted into full time casual labourers and remaining casual labourers could not be converted into full time due to non-availability of vacancies in Group-D cadre. It is also admitted that letter dated 29.9.2000 issued by Department of Telecommunication deals with regularisation of casual labourers including those full time casual labourers who were earlier working part time and were already made full time casual labourer based on one time relaxation granted vide letter dated 16.9.1999. As the applicants were still

working as part time casual labourers, this letter was not applicable to them. The options from part time casual labourers for doing the work of sweeping and willing to work in other SSAs in Himachal Pradesh Telecom were called for sending proposal to BSNL Corporate office, but the same did not get approved by the Corporate office. It is admitted that one Lal Ram was converted into full time sweeper. But, this was as per letter dated 16.9.1999. As per this letter, one time relaxation was given only for those part time casual labourers for their conversion to full time casual labourers who were working for four or more hours in a day. The case of Lal Ram was considered by Principal CTTC, Sundernagar as he fulfilled all the conditions contained in letter dated 16.9.1999. Further, the respondents have stated that the Corporate office has clarified vide policy letter dated 27.8.2013 (Annexure R-1) that conversion of part time to full time will not be considered in view of latest law in the case of Uma Devi (supra). Moreover, cases of applicants were considered for conversion as per Scheme dated 25.8.2000 and were not approved due to less number of vacancies. The respondents have, therefore, concluded that the O.A. deserves to be dismissed in the interest of justice.

7. We have heard the learned counsels for the opposing parties, gone through the pleadings available on record, and given our thoughtful consideration to the matter.

8. The issue before this Tribunal in the instant O.A. is whether the applicants are entitled for conversion and for their regularization from part time casual labourers to full time casual labourers in terms of policy decisions of the department as well as the law as settled by the courts.

9. We note that the instructions relied upon by the applicants are all related to the years 1999 and 2000. The later correspondence, if any, is for implementing them or incidental thereto. We find that both the instructions dated 6.9.1999 and 25. 8.2000 were one time relaxation and were not ongoing schemes. Instructions dated 16.9.1999 related to only those part time casual labourers working for four hours or more per day and directed their conversion to full time casual labourers. Though the applicants have claimed that they were working for full time, the respondents have categorically denied this stating that they were engaged only in casual work of sweeping which mostly took only 30 to 40 minutes per day. The respondents have further stated that for maintenance work of Exchanges, regular trained employees were engaged. It can, therefore, not be concluded that the applicants were covered under the order dated 6.9.1999. The other policy instructions relating to regularization were dated 25.8.2000 whereby part time casual labourers working for less than 4 hours per day were to be converted into full time casual labourers. However, these directions had certain conditions. These, inter-alia, included (1) they should have worked for 240 days in the preceding 12 months; (2) the conversion could be only to the extent of numbers indicated against respective field unit; (3) no post was to be created for this purpose; (4) the engagement as casual labourers had to be subject to suitability

and qualification; (5) where there was no shortage of Group-D at the station but part time casual labourers are working, the part time casual labourers were not be to converted into full time; and (6) they will not be entitled for temporary status and thereafter regularization.

10. The respondent department has stated that as per the above policy instructions, some conversions/regularizations took place, but due to lack of vacancies, all casual labourers could not be covered. One case of Lal Ram quoted by the applicants has been stated to be covered under the policy of 16.9.1999.

11. Over and above this, the department has stated that these policy instructions have become legally untenable in view of the law laid down by the Hon'ble Supreme Court in the case of Uma Devi (supra) and further, now no policy instructions have been issued and no regularization is under consideration. We find that the stand taken by the respondents is based on the Supreme Court judgment and cannot be interfered with. Generally appointments to public posts have to be made through open advertisement and through prescribed recruitment channels. Initial engagement as daily wager and then their conversion as full time daily wager or their regularization have been held to be violative of Articles 14 of the Constitution of India. It is not for the Courts or the Tribunals to direct the Government departments to frame policy for regularization or to make such regularizations. In the instant case, the department has clearly stated that there is no policy in existence as of now. The earlier policies were, in any case, one time measure and have now become legally untenable due to the judgment of the Hon'ble Apex Court in the case of Uma Devi (supra). We also note that even on earlier occasions when the applicants approached this Tribunal, the Tribunal restrained itself from ordering grant of full time status to the applicants and had only ordered that the claim of the applicants will be considered by the respondent department when contingency arises. This was the decision in 2015 when BSNL was statedly considering the matter of conversion of part time casual labourers into full time casual labourers against vacant posts. The order of the Tribunal was a general order with no specific time line and was based on the respondent department's policy of regularization which was statedly under consideration at that point of time.

12. We find that discrimination vis-a-vis Lal Ram again being agitated now, has already been dealt with in the earlier orders of this Tribunal dated 8.9.2015 whereby it was clearly stated as follows:

'We have carefully considered the material on record. It is established beyond doubt that the situation of Respondent No. 5 Sh. Lala Ram was indeed different from that of the applicant Smt. Mani Devi and hence there is no merit in the claim of the applicant that she be given full time status from the date when Sh. Lala Ram was given the same.'

13. In view of all above, we do not find justification for issuing any direction to the respondent department on the prayer of the applicants regarding their

conversion and regularization. As such, the O.A. is dismissed. No costs.