

(2020) 07 CAT CK 0011

In the Central Administrative Tribunal

Case No : Original Application No. 1999 Of 2017

Joginder Singh

APPELLANT

Vs

Bharat Sanchar Nigam Ltd & Others

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Citation : (2020) 07 CAT CK 0011

Hon'ble Judges : Vijay Lakshmi, Member (J); Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : U. Srivastava, M.R. Junadi

Final Decision : Dismissed

Judgement

Vijay Lakshmi, Member (J)

1. The applicant was engaged by the respondents (BSNL) as a Casual Labour in the year 1997. His services were terminated on 12.7.2002. Being aggrieved, the applicant approached the Central Government Industrial Tribunal-cum- Labour Court, by instituting Industrial Dispute No.15/2004, which was decided in his favour vide Award dated 23.11.2007 (Annexure A/2) whereby the Management of BSNL was directed to reinstate the applicant w.e.f. 12.07.2002 (the date on which the applicant's services were terminated) and to pay him 25% of back-wages within two months from the date of publication of the Award. The aforesaid Award was challenged by the respondents - BSNL by means of Writ Petition (C) No.2895/2008 before the Hon'ble Delhi High Court. The findings of the Central Government Industrial Tribunal were upheld by the Hon'ble Delhi High Court vide Order dated 9.4.2008 (Annexure A/3). The respondents filed LPA No.316/2008 before Hon'ble Delhi High Court, which was dismissed vide Order dated 10.2.2009 (Annexure A/4). Thereafter, the respondents challenged the aforesaid Order dated 10.2.2009 passed in LPA No.316/2008 by means of SLP (Civil) No.19105/2009 before the Hon'ble Apex Court which was also dismissed vide Order dated 8.1.2013 (Annexure A/5). The operative part of the aforesaid

Order passed by the Hon?ble Apex Court reads as under:-

"We have examined the case on merits. We are of the view that no case is made out for our interference with the impugned judgment. Accordingly, the special leave petitions are dismissed. Nevertheless, since a statement has been made on behalf of the respondents that they will not claim the back wages (25%) as awarded by the Industrial Tribunal-cum- Labour Court, we direct that the respondents shall be reinstated within four weeks from the date of receipt of a copy of this order. However, on reinstatement they will not claim any back wages.

The special leave petitions stand disposed of in the above terms."

The respondents - BSNL in the present OA, who were the petitioners before Hon?ble Apex Court, filed Review Petition (Civil) No.367/2013 and thereafter Curative Petition (Civil) No.330/2013, before the Hon?ble Apex Court. However, the Hon?ble Apex Court did not interfere it?s earlier orders. Copies of the Orders of Hon?ble Apex Court in the said Review Petition and Curative Petition have been annexed as Annexure A/6 (Colly.) by the applicant. The applicant thereafter filed Contempt Petition (Civil) No.337/2013 in SLP (Civil) No.19105/2009 in which notice was issued. However, the respondents in the meantime reinstated the applicant but with effect from 9.1.2013. As a result, the said Contempt Petition filed by the applicant was disposed of by the Hon?ble Apex Court vide Order dated 23.9.2013. Copy of the said Order passed by the Hon?ble Apex Court in Contempt Petition (Civil) No.337/2013 is on record as Annexure A/8.

2. After some time from his reinstatement, the applicant approached the respondents - BSNL to consider his case for regularization. But when no action was taken by the Department for his regularization, he filed OA 25/2015, which was disposed of by this Tribunal vide Order dated 16.12.2016 with a direction to the respondents to treat the applicant as continuously working as Daily Wager from the date of his initial appointment. The respondents were further directed to consider the prayer of the applicant for regularisation, keeping in view law as laid down by the Hon?ble Apex Court in Para 53 of the judgment rendered in the case of Secretary, State of Karnataka and others vs. Uma Devi and others, reported in (2006) 4 SCC 1, and to decide it by a reasoned and speaking order within a period of 90 days from the receipt of certified copy of the Order of this Tribunal.

3. The respondents in compliance of the Order of Tribunal, reinstated the applicant as Daily Wage Worker w.e.f. 12.07.2002 instead of 09.01.2013 as was the position before Hon?ble Apex Court and passed the order dated 27.3.2017, whereby they declined the request of the applicant for regularization of his services. This order dated 27.3.2017, denying the applicant?s claim for regularisation, has been impugned in the present OA by the applicant.

4. The legality and correctness of the aforesaid impugned order has been challenged by learned counsel for the applicant, mainly on the following grounds:-

(i) The respondents have passed the impugned order in a biased and arbitrary

manner. It is a cryptic order and not a speaking order.

(ii) As the respondents have antedated the reinstatement of the applicant from 09.01.2013 to 12.07.2002, in compliance of Order passed by this Tribunal in earlier OA, the applicant should have been treated as continuously working as Daily Wager since almost 22 years. However, the respondents have misread the judgment of Uma Devi's case and without considering the legal principle of 'equal pay for equal work', have rejected the claim of the applicant for regularisation of his services.

5. The respondents have filed the counter reply wherein it has been averred that the applicant is a Daily Wage Worker and not an employee of BSNL. Hence, there was no question of his services being terminated. He was only disengaged. The respondents in compliance of the directions of this Tribunal have passed a speaking order, keeping in view the law as laid down by Hon'ble Supreme Court in Para 53 of the judgment in the case of Uma Devi (supra). Moreover, the applicant was also not found eligible for extension of benefits in terms of DOP&T's instructions dated 11.12.2016. There is no bias against the applicant.

6. We have heard the rival contentions advanced by Shri U. Srivastava, learned counsel for the applicant and Shri M.R. Junadi, learned counsel for the respondents and have carefully perused the record.

7. Before coming to a logical conclusion on the issue involved in this OA, that whether the applicant is entitled for regularisation of his service or not, it is necessary to have a careful glance on Para 53 of the judgment passed by the Hon'ble Apex Court, in the case of Secretary, State of Karnataka and others vs. Uma Devi and others (supra), which is reproduced 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, 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 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 sub judice, 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."

(emphasis supplied)

8. The Hon?ble Apex Court in its later judgment rendered in the case of State of Karnataka and others vs. M.L.Kesari and others (2010) 9 SCC 247, has interpreted the phrase "one time measure" appeared in para 53 of Uma Devi's case (supra). The interpretation of phrase "one time measure" by the Hon?ble Apex Court in para 9, 10 and 11 of M.L. Kesari's case (supra) is reproduced below:-

"9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3)1, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi (3)1, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi (3)1, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi (3)1 has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3)1, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3)1, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi (3)1, are so considered.

11. The object behind the said direction in para 53 of Umadevi (3)1 is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3)1 was rendered, are considered for regularization in view of their long service. Second is to ensure that the

departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)¹] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3)¹ or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3)¹ as a one-time measure."

(emphasis supplied)

Thus, by a perusal of the aforesaid interpretation of Para 53 of Uma Devi's case, it becomes very clear that only those daily wagers or ad hoc employees, who have worked against a sanctioned post for more than 10 years as on 10.4.2006 without the protection of any order of a Court or a Tribunal and who possess the requisite qualifications prescribed for the post, are entitled to be considered for regularization.

9. Now reverting to the case in hand, the applicant was initially appointed as a Casual Labour in the year 1997 as mentioned by the applicant himself in para 4.1 of the present OA, and also mentioned in the issue No.1 framed by learned Presiding Officer of Central Government Industrial Tribunal-cum-Labour Court. He was disengaged on 12.07.2002. However, under the protection of various Courts? Orders from Central Government Industrial Tribunal-cum-Labour Court to Hon?ble Apex Court, he was reengaged w.e.f. 12.7.2002.

10. As per the interpretation of Uma Devi's case (supra) by the Hon?ble Apex Court in M.L. Kesari's case (supra), in order to become entitled for regularisation of services as one time measure, he should have completed more than 10 years on 10.4.2006 while working as a Daily Wager. However, the required 10 years period has not been completed on 10.4.2006 (the cut off date), his initial engagement being of 1997.

11. In view of the above, we are of the firm opinion that since the applicant in the instant case being initially appointed in the year 1997 had not completed 10 years on 10.4.2006. He was disengaged in the year 2002 and he continued to work under the protection of orders of various Courts or Tribunals, under these circumstances, the respondents have rightly rejected his claim for regularization by the impugned order dated 27.3.2017, which is a well reasoned and speaking order and deserves to be upheld by this Tribunal.

12. In view of the above, we do not find any reason to interfere in the impugned order. OA being devoid of merit is liable to be dismissed and is accordingly

dismissed. No order as to costs.