

(2019) 04 CAT CK 0013

In the Central Administrative Tribunal

Case No : Original Application No. 2275 Of 2017

Ms. Archana Saxena

APPELLANT

Vs

Union Of India through

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(1), 21, 309

Citation : (2019) 04 CAT CK 0013

Hon'ble Judges : Nita Chowdhury, J;S. N. Terdal, J

Bench : Division Bench

Advocate : T.D. Yadav, Y.P. Singh

Judgement

1. By filing this OA, the applicant is seeking the following reliefs:-

"(i) to declare the action of the respondents to replace the applicant, who is working on contractual basis by other employees, who are to be engaged on contractual basis as Field Investigator and the same is contrary to law laid down by the Hon'ble Supreme Court in the matter of Piara Singh vs. State of Haryana 1992 (4) SLR 770 and Principal Bench of CAT New Delhi in OA No.1405/2011 (pertaining to the respondents only), arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and set aside the same.

(ii) Consequently direct the respondents to evolve a scheme for absorption/regularization of the applicant as Field Investigator and

(iii) to pass such orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

(iv) Award cost.

2. When this case came up for admission, this Tribunal while issuing notice to the respondents granted ad interim relief to the effect that the respondents were directed to maintain status quo with respect of the services of the applicant on the post of Field Investigator till the next date of hearing vide Order dated

14.7.2017 and the same is continuing till date.

3. The case of the applicant is that she has been working on the post of Field Investigator since 4.8.2009 on contract basis and her last contract was executed for the period from 10.8.2006 to 14.7.2017. However, when the respondents have issued an advertisement for engagement of contractual staff for 75th Round of NSS dated 23.6.2017, apprehending termination of her services, she has filed this OA on 12.7.2017 seeking the reliefs as quoted above.

3.1 Counsel for the applicant submitted that when the applicant has been serving in the respondents' organization since 2009, the respondents be directed not to replace her by another contractual employee as the same is violative of law laid down by the Hon'ble Supreme Court in the matter of Piara Singh vs. State of Haryana 1992 (4) SLR 770 and Principal Bench of CAT New Delhi in OA No.1405/2011 and further submitted that respondents be further directed to evolve a scheme for absorption/regularization of the applicant as Field Investigator. In support of his contention, learned counsel for the applicant placed reliance on the following judgments:-

(i) Order of Hon'ble High Court of Himachal Pradesh, Shimla in CWP No.3274/2010 dated 22.8.2016;

(ii) Order of High Court of Karnataka in Writ Petition NO.207385/2015 (S-CAT) dated 26.10.2018.

4. Respondents have filed their reply in which they stated that a fresh selection process for fresh round of the National Sample Survey is undertaken to ensure that equal opportunity is provided to all the qualified and deserving candidates willing to apply for such an employment as per the provisions of Article 16 (1) of the Constitution of India and also to explore the possibilities of engaging the best possible workforce from a wider pool of available human resource. They further stated that the Hon'ble Supreme Court in Secretary, State of Karnataka & others vs. Uma Devi and others, has reaffirmed the principle that where the appointment is contractual and comes to an end by efflux of time the appointee has no right to continue in the post; the fact that even after the expiry of the original period the services are continued on an ad hoc basis from time to time would not confer any such right either. There can be no regularisation of a contractual employee after his services are terminated upon expiry of contract.

4.1 They also stated that the applicant was engaged on contract basis as per the terms and conditions of the agreement on consolidated remuneration for a specific period and with clear mentioning that the contractual engagement will not bestow any claim for regularisation in the office of the respondents and the applicant was quite aware of the nature of her contractual engagement.

4.2 They further stated that the judgment of the Apex Court in Uma Devi's case effectively rebuts the applicant's claim for regularisation and inter alia stated that :

"...45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. "

4.3 The respondents also submitted that a proposal for the regularisation of the contractual services of the Field Investigators was considered by the Respondents' department in consultation with the DOP&T but not accepted as their engagement is not in accordance with the provisions of the Recruitment Rules duly notified under Article 309 of the Constitution of India.

4.4 The respondents have also stated that as per the provisions of GFR-17, Rule 198 - A Ministry or department may procure certain non-consulting services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the basic guidelines. Accordingly, the respondents office being a Government Department was bound to adhere to the government instructions and so, went ahead for outsourcing the requirement of manpower for engagement of Field Investigators for the 75th Round Survey through likely indentified contractor engaged by the respondents in the PLES Survey. As per the approval of the competent authority already conveyed vide Division's letter No.A-12026/01/2017-E-II dated 23.6.2017, Field Investigators on contractual basis for 75th Round of NSS shall be engaged through agency, i.e., E-Centric Solutions Pvt. Ltd. However, the applicant is at her own liberty to apply for such an engagement with the respondents' department through the nominated agency.

4.5 They also stated that the applicant was engaged as Field Investigator on contract basis for different distinguished periods w.e.f. 4.8.2009 and it was never continuous period from year to year. No artificial/technical breaks were created rather there were actual breaks as every time, she had to apply afresh in response to the concerned advertisement and undergo the prescribed process of selection. The applicant has signed agreements for specified periods for engagement as Field Investigator on contract basis. As such the claim for regular appointment is unconstitutional.

5. Counsel for the respondents while reiterating the aforesaid averments submitted that reliance placed by the applicant on the Order passed by this Tribunal OA 1405/2011, in which this Tribunal has specifically observed that :

"3. applicant has no right either to continue in service on contract basis or to seek regularization on the basis of his contractual appointment. However, at this stage, applicant limits his relief only to the extent that in case of requirement of any contractual Investigator in future, respondents should consider his case for reengagement."

And therefore, in the concluding para, in the said Order, this Tribunal observed as under:-

"8. In the circumstances, we deem it appropriate to dispose of the present O.A. with a direction to the respondents to consider engaging the applicant as contractual Investigator, subject to availability of work in preference of juniors and freshers. No costs."

6. Having regard to the aforesaid submissions of the parties and after having carefully perused the material placed on record, we observe that the only grievance of the applicant is that a contractual appointee cannot be replaced by any other contractual appointee. Counsel for the applicant argued that one contractual employee cannot be replaced by another contractual employee on more or less the same terms. Reliance is placed upon the judgment of the Supreme Court in the case of State of Haryana and Ors. etc. etc. Vs. Piara Singh and Ors. etc. etc. (1992) 4 SCC 118 which holds that one work charged/casual employee/daily worker cannot be replaced by any worker of same category. It is argued that the ratio of the judgment of the Supreme Court in the case of Piara Singh and Ors. (supra) has been approved by the Supreme Court in the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1. The judgment in the case of Piara Singh and Ors. (supra) is referred to in paras 23 to 25 of the judgment in the case of Umadevi (supra). However, in para 26, the Constitution Bench in the case of Umadevi (supra) only disagreed with that direction of Piara Singh and Ors.'s case (supra) which requires regularization of ad hoc or temporary or casual employee. In para 25 of the judgment in the case of Umadevi (supra) para 46 of the Piara Singh and Ors.'s case (supra) is referred to and which para 46 states that an ad hoc or temporary employee should not be replaced by any other ad hoc or temporary employee and such an employee can only be replaced by a regularly selected employee and which is to avoid any arbitrary action on the part of the appointing authority.

7. The ratio and spirit of the judgments of the Supreme Court in the cases of Piara Singh and Ors. (supra) and Umadevi (supra) has been applied and reiterated by the Supreme Court in the judgment in the case of Mohd. Abdul Kadir and Anr. Vs. Director General of Police, Assam and Ors. (2009) 6 SCC 611 and which states that a person who is employed under the scheme has to continue in the employment till the continuation of the scheme and such a person's services cannot come to an end/ terminated before the expiry of the scheme except of course on disciplinary grounds or unsatisfactory services or medical grounds or attaining the normal age of retirement. Paras 17 and 18 of

the judgment in the case of Mohd. Abdul Kadir and Anr. (supra) are relevant and the same read as under:-

"17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re- appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co- terminus with the Scheme. The Circular dated 17-3-1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed."

8. Having perused the impugned advertisement, we find that vide this advertisement, which has now been issued by the respondents for appointment to the posts of Field Investigator and other posts for contractual period, shows that the persons to be appointed in terms of the impugned advertisement on the same monetary emoluments on which the present applicant is working, i.e, there is no change in the monetary emoluments with respect to new Field Investigator, who are sought to be appointed on contractual terms by the respondents, which are prevailing under PLFS w.e.f. 17. 7.2017.

9. In view of the above, the case of the applicant clearly falls within the ratios of the judgments of the Supreme Court in the cases of Piara Singh and Ors., Umadevi and Ors. and Mohd. Abdul Kadir and Anr. (all supra) and since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the part of the respondents, the present OA is disposed of with a direction to the respondents, if the applicant's work is found to be satisfactory as per the aforesaid judgments of the Apex Court, her case should also be considered for continuation on contractual employment and the respondents will pass a reasoned and speaking order in this regard within a period of 90 days from the date of receipt of certified copy of this Order. Till then, no coercive action shall be taken against the applicant. There shall be no order as to costs.