
(2019) 04 CAT CK 0001
In the Central Administrative Tribunal
Case No : Original Application No. 96 Of 2018

Pradnya Raghunath Mirgal

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 15

Citation : (2019) 04 CAT CK 0001

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

Bench : Division Bench

Advocate : S.M. Arif, Shireen Khan, Rishabh Sahu

Final Decision : Dismissed

Judgement

1. Nobody appeared for the applicants today. On previous date of hearing, i.e., 14.3.2019, it had been made clear that no further opportunity will be given to the applicants. As such, we proceed to adjudicate this matter by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987 and according heard learned counsel for the respondents.

2. By filing this OA, the applicants are seeking the following reliefs:-

"(a) The Hon'ble Tribunal may kindly be pleased to set aside the impugned order dated 21/02/2017 & 18/04/2017 (Annex. A/1-A & A/1-B).

(b) direct the respondents to extend the scheme by which the employees of Doordarshan was regularized on 06.05.2015 (Annexure A/4) OR frame scheme for regularization of the Casual announcer/compare/Programme assistants of All India Radio in the same manner and consider the services of the applicants for regularization.

(c) The costs of the petition may also kindly be awarded to the applicant.

(d) Pass any other further order(s) as may deem just fit and proper in the facts and circumstances of the case in the interest of justice and equity."

3. The applicants in this case are impugning the order dated 21.2.2017 vide which the respondents have allowed all AIR stations to conduct auditions for selection of presenters/Comperes/Announcers/RJs etc. booked on assignment basis and also impugning the subsequent order dated 18.4.2017 slightly modifying the aforesaid order dated 21. 2.2017 page-5, Para-2 under the heading Rescreening of Assignee, the existing panel of assignees will pass through the same 3-tier process, i.e., Written Test followed by Audition, further followed by interview as is warranted for a panel of fresh assignees except, of course, the relaxation of age, which should not be more than 50 years as the maximum possible entry level age and exemption from the requirement of paying the audition fee for those in the existing panel and also direction to the respondents to extend the benefit of the scheme in pursuance of which employees of Doordarshan were regularized or frame a scheme for regularization of the casual announcer/compare/progreamme assistants of All India Radio.

4. The applicants in this case, who were appointed as casual Announcers in All India Radio, are further seeking direction to the respondents to extend the regularization scheme as adopted by second respondent for the employees of Doordarshan or to form other similar scheme for them and also contended that the impugned orders have been passed by the respondents in violation of interim order passed in SLP (Civil) CC No.13876-13877/2016/ Civil Appeal Nos.8859-8860/2016 (titled as Director General, All India Radio vs. Purushottaman C. & others etc dated 5.9.2016 in which the Hon'ble Apex Court had granted status quo, obtaining as of today shall be maintained.

5. This case was earlier considered by this Bench on 22. 1.2019 and passed the following orders:-

"Learned counsel for respondents was heard in part on previous date i.e. 10.01.2019. It was made clear on the previous date that no further opportunity shall be given to the applicants. We noticed today also nobody present on behalf of applicants to place their stand, especially the prayer which they have claimed in this OA.

The respondents were asked to response on the following issues:

(a) Whether the reliefs claimed in this OA are the same as in the OA preferred before the CAT, Ernakulam Bench and whether the field is covered by the decision given by the Hon'ble High Court of Kerala and, if so, whether any order of regularisation was ever passed in this matter.

(b) The applicants have stated that after Uma Devi judgment (State of Karnataka Vs. Uma Devi), the respondents have regularised some persons but they are not regularising them. They state that order for regularisation of 233 casual artists of Doordarshan have, in fact, been passed.

In response to the same, learned counsel for respondents states that Doordarshan is a separate organisation and the persons listed in this OA are

casual announcers who perform part time work in All India Radio and, hence, any decision taken by Doordarshan cannot automatically apply to them.

Learned counsel for the respondents also draws our attention to the fact that the decision of the Hon'ble Kerala High Court has been challenged by the respondents before the Hon'ble Supreme Court in SLP (Civil) CC No.13876-13877/2016 (Civil Appeal 8859-8860/2016, titled Director General, All India Radio Vs. Purushottaman C. & others etc. and as per the order of Hon'ble Apex Court dated 05.09.2016, the matter is under consideration and the stay has been obtained on the orders passed by the other levels/courts.

He further informs that in the organisation of the respondents, due to special needs, hundreds of casual announcers are there who perform the duties pertaining to broadcasting and, hence, depending on their continued availability and approval of work done by them based on the listeners of their programme, decisions are taken by the respondents whether to call them for performing the casual announcers duties

It is his case that in view of the peculiar work needed to be performed in broadcasting, it is not possible to continue any casual persons indefinitely without ascertaining their voice quality and other parameters as required by them to be a popular broadcaster, from time to time.

We direct the respondents to answer the specific question relating to parity, if any, between the service conditions of Doordarshan and AIR, especially, in view of the fact alleged by the applicants that after Uma Devi case certain persons have in fact been regularised by the respondents. They may specifically state reasons why they are unable to carry on with the similar scheme as formulated by Doordarshan and also state the factor which prevents them from applying the said scheme.

They may also clarify the position as to whether the order of the Hon'ble Apex Court at present prevents adjudication of this matter or permits the same.

He is given two weeks to file further response on the queries raised.

List on 12.02.2019 under the caption "part-heard".

This matter was again taken up for consideration on 14.3.2019 and this Bench passed the following orders:-

"This matter has been hanging fire for a long time. It was heard extensively on 22.01.2019 and the respondents were asked for a number of clarifications also and a detailed reply has been furnished by them on each and every clarification on 21.02.2019. Today, they take us through the clarifications that they have given and especially draw our attention to the fact that they had constituted a Committee to look into the viability of framing a scheme for regularization of fee based announcers performing at Air Stations. The said Committee, after due deliberations on all issues raised by the applicants of this OA, has given a

recommendation to the authorities which does not recommend the creation of such a scheme of regularization basically on the following grounds:-

(a) The persons, who are the applicants of this OA, are not ad hoc appointees against any created post in AIR.

(b) The persons/applicants of this OA are, in fact, only casual announcers called upon to perform specific duties as and when required for a maximum period of 6 days in a month. Hence, they cannot in any way be called even persons performing full time activities in the respondent organization.

(c) He provides us copies of the judgments of the Hon'ble Apex Court in which he seeks to place reliance. The Hon'ble Supreme Court in Indian Drug & Pharmaceuticals Ltd. (2007)1 SCC 408 has clearly laid down that the Supreme Court cannot arrogate to itself the powers of the executive or legislature and cannot direct any selection of posts.

On 12.03.2019, proxy counsel for the applicants had appeared and sought an accommodation on ground of breavement in the family of one counsel for the applicants. We have noted that there are three counsels on behalf of the applicants and any counsel can definitely appear today. However, he informs that other counsel are also in Chennai. We do not understand the logic of this prayer. Counsel can plead anywhere in India if they are listed as counsel for any party. A last opportunity is given to the applicant to plead his case, failing which the matter shall be disposed of as per Rule 15 of the CAT (Procedure) Rules, 1987.

List the case on 20.03.2019.

It is made clear that no further opportunity shall be given to any party."

6. Shri S.M. Arif, learned counsel for the respondent nos.2 and 3 by referring to additional affidavit filed by him in pursuance of our aforesaid directions submitted that casual assignees are not employees of All India Radio as they have never been engaged against any substantive post nor are there any Recruitment Rules regulating their engagement.

6.1 Counsel further submitted that a Scheme for regularization of casual Artists in Doordarshan was formulated vide OM dated 9.6.1992, which was further modified vide OM dated 17.3.1994 and in terms of the above mentioned Scheme, the respective Kendras of the Doordarshan prepared a list of all those persons, who were engaged as casual Artists upto 31.12.1991 by them for their regularization and further emphasized that in the said Scheme itself it was clearly mentioned that those, who are engaged on casual basis after 31.12.1991 will not be eligible for consideration for regularization. Thereafter a list was prepared by the respective Kendras for regularization of casual Artists on the basis of their initial engagement and from that list only the casual Artists of Doordarshan Kendras were regularized at the availability of the vacancy in the respective Kendra and the said regularization is/was done in terms of regularization Scheme of 1992 and 1994 only. The order dated 6/8.5.2015

passed by the Directorate General, Doordarshan is issued in that background only. As such the claim of the applicants that any scheme is formulated by the Directorate of Doordarshan for regularization of casual Artists after the judgment of the Hon'ble Supreme Court in Uma Devi is wrong.

6.2 Counsel further contended that Doordarshan and All India Radio are two separate Organization, which are headed by two different Director Generals, therefore, any decision taken by the one Directorate is not automatically applicable to the other Directorate.

6.3 Counsel also submitted that vide order dated 6/8.5.2015, the Directorate General, Doordarshan regularized the services of the following categories:-

- i. Production Assistants;
- ii. Graphic Artists,
- iii. Makeup Assistants,
- iv. Lighting Assistants,
- v. Floor Assistants,
- vi. Carpenter,
- vii. Painter and
- viii. Tailor.

However, on the other hand, the applicants of this case are not working on any post on casual basis but they are simply put on the panel for engagement as casual presenters for presenting a Programme on All India Radio as and when required, subject to a maximum of 6 engagements in a month. As such these applicants are not similarly placed as the persons working with the Directorate General, Doordarshan.

6.4 Counsel also emphasized that in All India Radio, thousands of casual Announcers are being engaged for performing the duties pertaining to Broadcasting. However, they are not being engaged against any existing posts/ regular vacancies. The applicants are casual Presenters with the All

India Radio and they were not appointed to any post by AIR Stations or selected on the basis of any competition as they were simply empanelled to be offered bookings as and when required as per the requirement of the programmes at stations with the prescribed fee as per Rule.

6.5 Counsel for the respondents further emphasized that these applicants are to be engaged for only maximum of 6 days in a month or 72 days in a year, if required.

6.6 Counsel also submitted that 26 and 23 casual Presenters approached the Ernakulam Bench of this Tribunal by filing OA Nos.1182/2012 and 475/2013

respectively for their regularization. Since common relief sought for by the applicants in those OAs, the said OAs were disposed of by a common order dated 22.11.2013, the operative part of the same reads as under:-

"6. Having heard learned counsel for the parties and having perused the materials available on record we are of the view that these Original Applications need not be retained on the file of this Tribunal any further particularly since the respondents have unequivocally admitted that a scheme is proposed to be introduced by which the grievance of most of the applicants are likely to be redressed.

7. Therefore, the Original Applications are disposed of with a direction to the respondents to take expeditious steps to finalize the scheme and implement the same as undertaken by them in their written statement. Till such time the scheme is brought into force the present arrangement of engaging the applicants in the various station of All India Radio shall continue. In other words applicants shall be given casual engagement as Announcers/Comperes/Production Assistants on assignment basis depending on the requirement for such services. Respondents shall finalize and implement the scheme within an outer limit of six months from the date of receipt of a copy of this order.

8. Original Applications are disposed of in the above terms. No costs."

Aggrieved by the aforesaid Order of Ernakulam Bench of this Tribunal, the respondents have filed OP (CAT) Nos.38/2015 and 175/2015 before the Hon'ble High Court of Kerala at Ernakulam and the Hon'ble High Court vide Order dated 22.10.2015 disposed of the same with the following observations:-

7. In view of the above stand taken by the petitioners, the Central Administrative Tribunal disposed of O.A.No.1182 of 2012 directing the petitioners herein to finalise the scheme within an outer limit of six months from the date of receipt of a copy of the order. The said order was passed on 22.11.2013. It was the said order that was sought to be reviewed in the year 2014 by the petitioners contending that, the statements made in Annexure A-20 order as well as the reply statement were the result of a mistake. By Ext.P4 order, the Central Administrative Tribunal has dismissed the review application finding that there were no error apparent on the face of the record warranting a review of the order, as sought for. According to the learned ASGI, the orders Exts.P3 and P4 require to be interfered with and set aside for the reason that, they were passed on the basis of erroneous assumptions.

8. Though it is contended by the learned ASGI that the statements made in Annexure A-20 order as well as reply statement filed before the Central Administrative Tribunal were the result of a mistake, it is difficult to accept the said statement. The fact remains that, the order Annexure A-20 was passed by a responsible and high official of the Prasar Bharati. While disposing of the representation submitted by the respondents, he was exercising a quasi judicial function. It cannot be believed that, such a responsible and high official would

have issued the order, without properly ascertaining and taking note of the facts. Thereafter, when the O.A. was filed before the Central Administrative Tribunal, a reply statement has been filed, reiterating the very same stand. The stand of the petitioners is worded in very categorical terms that there was a scheme for regularisation of the Casual employees that was under consideration. Even before us, it is not disputed by the learned ASGI that there was a scheme for regularisation of Casual employees, insofar as the Doordarshan was concerned. However, according to him, the scheme was subsequently dropped. It is contended that, it was under the mistaken impression that the said scheme would apply to Prasar Bharati as a whole, that the statement in Annexure A-20 order as well as the reply statement were made. However, apart from the mere statement to the said effect made before us now as well as before the Central Administrative Tribunal in the review application, there is absolutely no material to support the said submission. In all likelihood, the attempt of the petitioners is to put on record, a change in the stand that was adopted by them later. Having made the statements as borne out by Annexure A-20 order and having reiterated the same in the reply statement filed in the O.A. before the Central Administrative Tribunal, we are not prepared to accept that, they were the result of a simple mistake.

8. A perusal of the order of the Central Administrative Tribunal shows that, what has been directed is only to finalise the scheme that was stated to be in existence, within an outer limit of six months. The Central Administrative Tribunal has not issued any directions regarding the content of the scheme or the manner in which the scheme has to be formulated. Therefore, we are not satisfied that any prejudice has been caused to the petitioners by the issue of the said direction. It is for the petitioners to formulate a scheme, in accordance with the assurance given to the Central Administrative Tribunal, without further delay. We are not satisfied that, Exts.P3 and P4 orders suffer from any errors justifying an interference therewith under Article 227 of the Constitution. For the above reasons, we decline interference with the order Ext.P2 in O.A.No.475 of 2013 that is under challenge in O.P.(CAT).No.175 of 2015 also.

9. Since contempt proceedings are pending against the petitioners for not having complied with the directions of the Central Administrative Tribunal, we are inclined to accept the request of the learned ASGI for granting further time to comply with the orders of the Central Administrative Tribunal in O.A.No.1182 of 2012 and O.A.No.475 of 2013. Accordingly, the time limit stipulated for complying with the directions in the orders of the Central Administrative Tribunal referred to above are extended by a period of six months from today."

6.7 Counsel further submitted that thereafter a Committee was constituted by DG: AIR to explore the feasibility for framing guidelines for regularization of casual presenters engaged by various AIR Stations all over India. The said Committee after detailed discussions/deliberations on the issue at great length and after having consulted a number of experts in this field submitted its Report

on 28.2.2016 to the competent authority for its approval, which has since been accepted by the competent authority. The said Committee in its report has come to the conclusion that as the casual presenters are engaged by AIR for presenting a Programme on All India Radio as and when required, subject to a maximum of 6 engagements in a month and they are performing the work for a few hours in a day and for a maximum of six days in a month or 72 days in a year, any attempt for regularization is fraught with complications and would jeopardize the interests of the organization. The idea, therefore, is neither administratively feasible nor economically viable and the regularization on the whole is against the principles of natural justice and also against the larger public interest.

6.8 Shri Arif also submitted that the respondents have preferred an SLP against the aforesaid Order of the Hon'ble High Court of Kerala before the Hon'ble Supreme Court, which came up for hearing on 5.9.2016 and the Apex Court after hearing the counsel for the parties directed the petitioners (respondents in this case) to maintain status quo as on 5.9.2010 quo the respondents therein.

6.9 Shri Arif further argued that the casual presenters are engaged as and when their services are required by a Station as per Programme exigencies. Because their voice goes on air, it is not only a practice but an essential requirement for audition test of his/her voice quality and experts evaluate their performance from time to time. Therefore, at the time of empanelment itself, it is made abundantly clear to the casual assignees that there is no guarantee of even regular booking, leaving aside regular employment. Therefore, with this background and with the intentions to infuse fresh talents and let the existing talents introspect themselves, Director General, All India Radio issued orders on 21.2.2017 and 184.2017 with the approval of the competent authority to audition for the fresh talent available in the open market and to re-screen the existing panel with the help of Audition/re-screening Committees comprising outside experts having specialization and expertise in diverse fields so that a panel of highly talented assignees can be created to compete with their counterparts in the private channels.

6.10. Counsel for the respondents further placed reliance on the following observations of the Hon'ble Delhi High Court in Union of India and others vs. Ms. Anshul Sharma (CWP No.319/2001 and batch matters) decided on 13.2.2002, which was a case in which the similar issues as have been raised in this OA had already been adjudicated, :-

"In any event, as noticed hereinabove, in the instant case, the scheme of regularization has no application at all. Neither this Court nor the Tribunal can direct the respondents to frame a scheme of regularization. Such direction, as has been discussed hereinabove, would be contrary to the provisions contained in Article 309 of the Constitution. It is trite that the Court cannot issue a direction, which would be contrary to law as also the Constitution.

We are, therefore, of the opinion that the impugned judgment of the Tribunal cannot be sustained, which is set aside accordingly.

These writ petitions are allowed. However, having regard to the facts and circumstances of these cases, there shall be no orders as to costs."

6.11 In support of his contentions, Shri Arif placed also reliance on the following judgments of the Hon'ble Supreme Court as well as Hon'ble Delhi High Court:

(I) State of AP vs. McDowell & Co. AIR 1996 SC 1627, the Apex Court held that "a law made by the Parliament or the Legislature can be struck down by Courts on two ground and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part - II of the Constitution or of any other constitutional provision. There is no third ground.

(II) P.U.Joshi vs. Accountant General (2003)2 SCC 632 held as under:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(III) Indian Drugs & Pharmaceuticals Ltd. vs. Workman, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408, the Apex Court held as follows:-

"When the State action is challenged, the function of the court is to examine the

action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize upon any matter which under the constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers".

The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam vs. Dy. S.P.* AIR 2005 Mad 1, and we fully agree with the views expressed therein."

(IV) *Post - Doctoral Research Associates of S.V. University, Dr. K. Krishna Reddy and others vs. Union of India and others*, (2002) 5 SCC 24, the Apex Court held that Research Associates' plea for directing UGC and CSIR to frame a scheme providing security of continuance in the work done by them, was rejected.

(V) *State of Himachal Pradesh vs. Nodha Ram and others*, JT 1996 (1) 220, the Apex Court held that "Directions cannot be given to regularize their services in the absence of any existing vacancies nor can directions be given to the State to create posts.."

(VI) *Govt. of Andhra Pradesh and others vs. K. Brahmanandan & others*, (2008) 5 SCC 241, the Apex Court held that court could not issue mandamus for regularization of services of an employee, which would be violative of constitutional scheme.

(VII) *Meharchand vs. Anu Lumba & others* in Civil Appeal No.7051/2002 decided on 8.8.2006, the Apex Court held that "Only because the respondents have worked for sometime, the same by itself would not be ground for directing regularization of their service in view of the decision of this Court in *Uma Devi* (supra).... We set aside that part of the judgment whereby and where under the appellants had been directed to create posts and regularize the services of the respondents.?"

7. We have also carefully perused the pleadings available on record. We find that similar issues had already been adjudicated and decided by the Hon'ble Delhi High Court as while allowing the Civil Writ Petitions No.319, 3592, 946, 2900, 2589 of 2001 preferred by the respondents, vide common Judgment dated 13.2.2002 in which similar contentions and averments have also been raised by

the respondents therein as have been raised by the applicants in this OA. The relevant portions of the said judgment read as under:-

"The sole question, which arises for consideration, is as to whether the scheme of regularization, as noticed hereinbefore, would apply to the case of the respondents herein or not.

From a perusal of the afore-mentioned scheme of regularization, it would appear that the same applied only to Casual Artists, who were engaged on casual/assignment basis as Production Assistants and General Assistants upto 31.12.1991. The respondents admittedly do not fall within the said category.

So far as Clerical Group and Production Group within the category of Staff Artists are concerned, evidently they would come within the purview of the said scheme, but the Announcer, Newsreaders, Newsreaders-Cum-Translator group would not.

It is now a well-settled principle of law that having regard to the provisions contained in Article 309 of the Constitution, regularization cannot be a mode of recruitment.

The respondents were appointed on casual basis. They admittedly were required to perform for a period of 6 days in a month and 72 days in a year. It has not been disputed that those who are empanelled as Casual Artists were free to take employment on other days and in their spare time even on the day when they perform in AIR. It is also not in dispute that they used to be given a fixed fee for each performance.

In that situation, it is evident that the respondents were not even appointed on casual basis as the employees who could be rendering regular and continuous services to the petitioners. No scheme for their regularization can be evolved having regard to the provisions of Article 309 of the Constitution.

A scheme of regularization can be evolved or a Statute or Statutory rules can be made for regularization of the casual employees, who would answer the criteria of holding a civil post in terms of Article 309 of the Constitution. A person who renders service on 6 days a month cannot be a holder of a civil post."

(emphasis supplied)

The Hon'ble Delhi High Court in the said Judgment after considering the plethora of judgments of the Hon'ble Supreme Court as well as of Hon'ble High Courts, further observed as under:-

"Having regard to the rule of precedent, the Court is bound to follow a three-Judge Bench decision in preference to a two-Judge Bench decision. (See S.H. Rangappa v. State of Karnataka & Anr. with Khathum Bi vs. State of Karnataka & Ors., reported in (2002) 1 SCC 528 and Ram Bilas Yadav & Ors. v. State of Bihar reported in 2002 AIR SCW 93).

In any event, as noticed hereinabove, in the instant case, the scheme of

regularization has no application at all. Neither this Court nor the Tribunal can direct the respondents to frame a scheme of regularization. Such direction, as has been discussed hereinabove, would be contrary to the provisions contained in Article 309 of the Constitution. It is trite that the Court cannot issue a direction, which would be contrary to law as also the Constitution.

We are, therefore, of the opinion that the impugned judgment of the Tribunal cannot be sustained, which is set aside accordingly.

These writ petitions are allowed. However, having regard to the facts and circumstances of these cases, there shall be no orders as to costs."

Thereafter the petitioners in CWP No.319/2001 (Anshul Sharma and others) had preferred a Civil Appeal No.11855/2002 before the Hon'ble Supreme Court, the same was dismissed by the Apex Court vide Order dated 11.7.2002.

As such, it is evidently clear that the aforesaid conclusion of the Hon'ble Delhi High Court was upheld by the Apex Court. In view of the above, the said decision of the Hon'ble Delhi High Court holds sway.

8. Thereafter the employees as similar to the applicants in this OA have preferred OA Nos.1182 of 2012 and 475/2013 before the Ernakulam Bench of this Tribunal and the said Bench vide Order dated 22.11.2013 disposed of the said OAs with the following observations:-

"3. The common grievance of the applicants is that the respondents are dragging their feet in the matter of finalization of the proposed scheme for regularization of their services who have been working as Casual Announcers/Comperes/Production Assistants in All India Radio for the last several years. The prayer is to issue an appropriate direction to the respondents to finalize the proposed scheme for regularization within a time frame. In Original Application No. 475 of 2013 there is a further prayer to quash Annexure A19 notice dated March 23, 2013 issued by respondent No. 2 inviting applications from eligible candidates for combined recruitment for the post of Programme Executive and Transmission Executive.

4. It is beyond controversy that the applicants have been working as Casual Announcers/Comperes/Production Assistants "on assignment basis" and that they are being engaged for six days in a month on an average.

Applicants have fairly conceded that their engagement as Casual Announcers/Comperes/Production Assistants was being continued for years on the assurance that an appropriate scheme will be introduced for regularization of their services in the very near future. But so far the respondents have not taken any concrete steps in this regard.

5. It is contended by the respondents that the services of the applicants were never utilized by All India Radio for any continuous period but they were being engaged only as and when such services were required. In fact, their services

are being utilized for different forms of work to cope up with temporary increase of work, as it is not at all feasible for the Department to keep regular staff which may incur very huge expenditure. While conceding that a scheme for regularization of casuals is on the anvil, it is pointed out by the respondents that formulation of such scheme is a time consuming process. Before finalizing the scheme the respondents have to necessarily hold consultations with various authorities like all offices of Chief Executive Officer, Prasar Bharthi, Secretary, Ministry of Information & Broadcasting, Secretary, Ministry of Legal Affairs, Union Public Service Commission, Department of Personnel & Training, etc. Learned counsel for the respondents submits that the proposed scheme will be finalized as early as possible.

6. Having heard learned counsel for the parties and having perused the materials available on record we are of the view that these Original Applications need not be retained on the file of this Tribunal any further particularly since the respondents have unequivocally admitted that a scheme is proposed to be introduced by which the grievance of most of the applicants are likely to be redressed.

7. Therefore, the Original Applications are disposed of with a direction to the respondents to take expeditious steps to finalize the scheme and implement the same as undertaken by them in their written statement. Till such time the scheme is brought into force the present arrangement of engaging the applicants in the various station of All India Radio shall continue. In other words applicants shall be given casual engagement as Announcers/Comperes/Production Assistants on assignment basis depending on the requirement for such services. Respondents shall finalize and implement the scheme within an outer limit of six months from the date of receipt of a copy of this order.

8. Original Applications are disposed of in the above terms. No costs."

Thereafter the respondents had challenged the aforesaid Order of the Ernakulam Bench before the Hon^{ble} High Court of Kerala at Ernakulam by filing OP (CAT) No.38 of 2015 and the Hon^{ble} High Court vide Order dated 22.10.2013 disposed of the said petition with the following observations:-

"7. In view of the above stand taken by the petitioners, the Central Administrative Tribunal disposed of O.A.No.1182 of 2012 directing the petitioners herein to finalise the scheme within an outer limit of six months from the date of receipt of a copy of the order. The said order was passed on 22.11.2013. It was the said order that was sought to be reviewed in the year 2014 by the petitioners contending that, the statements made in Annexure A-20 order as well as the reply statement were the result of a mistake. By Ext.P4 order, the Central Administrative Tribunal has dismissed the review application finding that there were no error apparent on the face of the record warranting a review of the order, as sought for. According to the learned ASGI, the orders Exts.P3 and P4 require to be interfered with and set aside for the reason that, they were passed

on the basis of erroneous assumptions.

8. Though it is contended by the learned ASGI that the statements made in Annexure A-20 order as well as reply statement filed before the Central Administrative Tribunal were the result of a mistake, it is difficult to accept the said statement. The fact remains that, the order Annexure A-20 was passed by a responsible and high official of the Prasar Bharati. While disposing of the representation submitted by the respondents, he was exercising a quasi judicial function. It cannot be believed that, such a responsible and high official would have issued the order, without properly ascertaining and taking note of the facts. Thereafter, when the O.A. was filed before the Central Administrative Tribunal, a reply statement has been filed, reiterating the very same stand. The stand of the petitioners is worded in very categorical terms that there was a scheme for regularisation of the Casual employees that was under consideration. Even before us, it is not disputed by the learned ASGI that there was a scheme for regularisation of Casual employees, insofar as the Doordarshan was concerned. However, according to him, the scheme was subsequently dropped. It is contended that, it was under the mistaken impression that the said scheme would apply to Prasar Bharati as a whole, that the statement in Annexure A-20 order as well as the reply statement were made. However, apart from the mere statement to the said effect made before us now as well as before the Central Administrative Tribunal in the review application, there is absolutely no material to support the said submission. In all likelihood, the attempt of the petitioners is to put on record, a change in the stand that was adopted by them later. Having made the statements as borne out by Annexure A-20 order and having reiterated the same in the reply statement filed in the O.A. before the Central Administrative Tribunal, we are not prepared to accept that, they were the result of a simple mistake.

8. A perusal of the order of the Central Administrative Tribunal shows that, what has been directed is only to finalise the scheme that was stated to be in existence, within an outer limit of six months. The Central Administrative Tribunal has not issued any directions regarding the content of the scheme or the manner in which the scheme has to be formulated. Therefore, we are not satisfied that any prejudice has been caused to the petitioners by the issue of the said direction. It is for the petitioners to formulate a scheme, in accordance with the assurance given to the Central Administrative Tribunal, without further delay. We are not satisfied that, Exts.P3 and P4 orders suffer from any errors justifying an interference therewith under Article 227 of the Constitution. For the above reasons, we decline interference with the order Ext.P2 in O.A.No.475 of 2013 that is under challenge in O.P.(CAT).No.175 of 2015 also."

Against the aforesaid decision of the Hon'ble High Court of Kerala at Ernakulam, the respondents have preferred an SLP before the Hon'ble Supreme Court, the Apex Court granted status quo, obtaining as of today shall be maintained, in the meanwhile, vide Order dated 5.9.2016 and the said SLP is still pending disposal

before the Hon?ble Supreme Court.

9. Counsel for the respondents annexed a complete report of the Committee on the viability of framing a scheme for regularization of Fee Based Announcers performing at AIR Stations vide order dated 9.2.2016, which was constituted in pursuance to the aforesaid directions of Ernakulam Bench of this Tribunal, which was affirmed by the Hon?ble High Court of Kerala, with their additional affidavit. We have perused the same. The said Committee was entrusted with the work of framing a scheme for regularization of casual announcers after due discussion and deliberations on the issue immediately. The said Committee comprises of the following:-

1. Dr. Shailendra Kumar, ADG (A&P) - Chairman
2. Dr. Daljeet Sachdeva, DDG (SW) - Member
3. Shri N.P. Joshi, Director A-II - Member

The said Committee after detailed deliberation on the issues, like Issue of Regularization of the Casual Announcers; Demands of Deelance Announcers and Department's view; Talent Booking Scheme of All India Radio; Current Trends in Broadcasting on popularization of FM; Financial Viability of the Scheme; & Recommendations of the Committee, gave its recommendations, which are as follows:-

"6.1 The Committee was constituted to explore the feasibility of regularization of casual announcers, etc. engaged by various AIR Stations vide DG: AIR meno No.32/01/2013-S.VIII, dated Feb 9, 2016.

6.2 The Committee after having examined the issue in all its ramifications, arrived at the conclusion that any attempt for regularization is fraught with complications and would jeopardize the interests of the broadcasting organization. The idea, therefore, is neither administratively feasible nor economically viable and against the Principles of natural justice and also against the larger public interest.

6.3 It Is necessary to appreciate the sheer enormity of AIR?s network. It comprises the following

Primary Channel	117
Vividh Bharti	37
Local Radio Station	87
FM Rainbow	23
FM Gold	05
Total	269

6.4 Each channel has its own identity and character. Broadly speaking, primary

channel is devoted to public service broadcasting whose avowed objective is to inform the masses about the ways and means of leading a better quality of life. Local radio stations serve as change agents at the grassroots level. The other channels namely, Vividh Bharti, Rainbow and Gold are essentially light entertainment channels, providing recreation and also providing information including news to the public.

6.5 To meet the sudden and rapid expansion of AIR's network, AIR started engaging larger number of presenters on a casual assignment though such practice had been followed for decades. The quantum of programme output across this vast network is mind boggling. Induction of staff, including the programme presenters, could not cope with the quantum jump in the number of stations and programme hours over the years.

6.6 Announcers, Radio Jockeys (RJs), Comperers, and Anchors, etc. are engaged contractually as and when their services are required by a station, subject to the programme exigencies.

6.7 These casual assignees are not on the establishment of All India Radio and each panel of these casual presenters is subject to review from time to time. This temporary panel is similar to the ones AIR has in respect of drama voices, singers, com,posers, instrumentalists and part time correspondents.

6.8 Every presenter, before he/she is allowed to go on the air, is subject to an audition test of his/her voice quality and experts evaluate their performances in terms of diction pronouciation, modulation, intonation, presentation style and command over language. Capacity of a candidate to write scripts/announcements as well as ability to translate from English into Hindi/regional language and vice vers, is also tested.

6.9 One voice in one area in perpetuity tends to sound stale and monotonous, wearing away the public as well as advertisers. In a nutshell, AIR cannot but review its panel from time to time to retain the best and leave those who have lost their sheen off the air. Variety is the spice of life, especially in the realm of broadcasting. Therefore, at the time of empanelling itself, it is made clear to the casual assignees that there is no guarantee of regular booking, leave aside regular employment.

6.10. Several styles are in vogue depending on a channel's identity, programme genre, presenter's personality and attributes/traits. To illustrate, an on-air personality who is successful as a compare of children's prorgamme may not necessarily be suitable for other programme. Similarly, the attributes of a sports commentator, anchor of a show, moderator for a discussion, radio jockey, newspresenter are vastly different from one another and the same person does not fit the bill for all the occasions.

6.11 With the advent of FM stations, a perky presentation style with any pattern has caught the imagination of the youth. AIR to endure its popularity of its

Rainbow/Gold channels has been creating panel of presenters and RJs periodically to infuse fresh talent, replacing the entrenched that have started to sought stale and boring.

6.12 AIR has been using stock characters for compering programmes for children, women, rural folks and farmers, with their ability to communicate in the local dialect and idiom so that they could establish a rapport with the target audiences and enjoy their trust.

6.13 Throughout the country there is abundant talent and also a passion for broadcasting. The driving force for those who aspire to become presenters, anchors, RJ, etc. is the prospect of emerging as household names, youth icons and the adulation and applause that follow successful on-air personalities.

6.14 There is no limit on the size of the panel of casual presenters at a station as the larger the size the greater is the variety for the Programme Head at the station to choose from, for specific tasks/programmes. Thus the very idea of regularizing those on these constantly swelling panels is impractical, to put it mildly.

6.15 Realizing that a casual programme presenter gets a maximum number of six assignments in a month, not many people care to apply, those who do so are driven by a passion for the broadcasting and not the remuneration per se that goes with it. In fact, many of them are employed in different professions, some of them highly lucrative, such as medical specialists, bureaucrats, engineers and so on for whom programme presentation is a hobby and pastime. These highly talented people would not care to become regular presenters.

6.16 If those, who happen to be on the panel of AIR presently are regularized, AIR would be denying an opportunity to the candidates of yesteryears. It is pertinent to mention that AIR has already decided to stop the practice of recruiting regular announcers realizing the fact that it is casual presenters that can lead variety to the art of presentation.

6.17 All those persons on the panel of presenters, announcers, etc. are selected on the basis of audition tests and hence a mechanism to filter the best among them, is again not a practical proposition.

6.18. In the case of CAT O.A. No.541/1997, relating to Sh. Manoj Pathak and others filed before the Hon'ble CAT Patna, a judgment was delivered in favour of casual announcers/comperers. The judgment was subsequently endorsed by the Hon'ble Patna High Court. However, the Directorate General, All India Radio approached the Hon'ble Supreme Court of India praying for quashing the judgment of the Patna High Court. The Hon'ble Supreme Court vide their order dated 09.03.2011 was pleased to set aside both the orders of CAT Patna and the Patna High Court. The contention of the respondents (All India Radio) in the OA is that the talents are booked by All India Radio only under the Talent Booking Scheme and that such casual engagements are never made by any station of All

India Radio against vacancies in the sanctioned posts. Thus the law of the land does not permit regularization of casual assignees going by the above precedence.

6.19 There may be occasions when an organization like All India Radio (AIR) may have to engage persons to discharge the duties in respect of work on projects that are not needed permanently. This right of an organization cannot but be recognized and there is nothing in the Constitution which prohibits such engagement of persons to meet the needs of the situation.

6.20. Even for the sake of argument one hypothetically works out the administrative and financial burden of regularizing about 10000 people, then it appears that such a scheme is neither administratively feasible in the absence of Recruitment Rules and other recruitment procedures including selection by a recruitment agency like Staff Selection Commission (SSC) nor economically viable for any organization. Therefore, the scheme is not possible in the larger public interest.

6.21 It is recognized that AIR's motto is "बहुजन हिताय बहुजन सुखाय" by providing education, information and entertainment. Its survival therefore is extremely important in the public interest. Taking all these factors into consideration it is the considered view of the Committee that the very idea of regularization of casual announcers/staff artists is administratively impractical, financially non-viable and legally untenable and therefore is not recommended..."

10. Respondents have categorically stated in their additional affidavit that the recommendations of the aforesaid Committee had since been accepted by the competent authority. We have also perused the Order of the Hon'ble Supreme Court passed in Civil Appeal No.863/2006 filed by the respondents as well as Civil Appeal filed by the applicants in the said OA preferred by him at Patna Bench against the orders of the Patna Bench of this Tribunal as well as of the

Hon'ble High Court of Patna. In the said Civil Appeal, the Apex Court vide Order dated 9.3.2011 observed as under:-

"These appeals are allowed. The O.A. filed by the respondents shall stand restored to its file for the hearing on merits with the further direction that the Tribunal may have to consider the question referred to hereinabove and record a finding thereon. We have not expressed any opinion, whatsoever, on the merits on any of the contentions placed before us and we have, accordingly, left them open for the decision of the Tribunal.

We request the Tribunal to dispose of the O.A. as expeditiously as possible, preferably within six months from the date of receipt/ production of a copy of this order."

11. Subsequent to the aforesaid decision of the Hon'ble Supreme Court, the matter (OA No.541/1997) had been adjudicated by the Patna Bench of this

Tribunal and vide Order dated 31.5.2013 directed the respondents to consider the case in the light of Para 53 of the judgment of the Hon'ble Supreme Court in Uma Devi case, the relevant portion of the same reads as under:-

19. In view of the aforesaid discussions of the factual and legal aspect of the matter, we are of the opinion that the case of the applicants is also squarely covered by the judgment passed by the Hon'ble Apex Court in the case of State of Karnataka Vs. Uma Devi reported in 2006(4) SCC 1 as well as State of Karnataka & Ors. Vs. M.L. Kesari & Ors. Reported in (2010) 2SCC(L&S) 824, wherein the issue of regularisation of casual labour was dealt with. Hon'ble Apex Court in the matter of State of Karnataka & Ors. Vs. M.L. Kesari & Ors has held as under:-

.....

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts.

Consequently, several departments and 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, 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 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 10.04.2006 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, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, 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, are so considered.

8. The object behind the said direction in para 53 of Umadevi 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 was rendered, are considered for regularisation 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 regularise 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 10.04.2006 (the date of decision in Umadevi) 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 regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure.

9. These appeals have been pending for more than four years after the decision in Umadevi. The appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularisation within six months of the decision in Umadevi or thereafter.

10. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one time regularisation exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts. This appeal is disposed of accordingly."

.....

22. In view of our observations made in para 8 to 20 above and our findings arrived at para 21 above , we, accordingly, direct the respondents to consider the case of the applicants for regularisation and eventual absorption against the regular vacancy in due course in terms of the scheme formulated for regularisation of Casual Production Assistant and General Assistants in the AIR pursuant to the judgment of the Principal Bench of the CAT in OA No. 822/1991 dated 18.09.1992 or alternatively to formulate a scheme for regularisation of the eligible applicants in the light of the scheme already formulated by the said Department pursuant to the order passed in OA No. 563/1986 and OA No. 822/1991 within a period of four months from the date of receipt of a copy of this order.

23. The OA is disposed of accordingly with above directions with no order as to costs."

The aforesaid decision of the Patna Bench of this Tribunal was stayed by the High

Court of Judicature at Patna when the respondents have preferred Civil Writ being CWJC No.8726 of 2014 before the High Court, vide interim Order dated 24.6.2014 and further vide Order dated 25.4.2016, the High Court confirmed the said interim order dated 24.6.2014 while admitting the said Writ Petition. Hence, quite clearly the said matter at present is still to be finally adjudicated by the said Hon?ble High Court. However, in view of the decision of the Apex Court in Civil Appeal No.11855/2002 (Anshul Sharma and others vs. UOI and others), in which the petitioners have challenged the decision of the Hon?ble Delhi High Court in CWP No.319/2001 and other connected cases dated 13.2.2002, upholding the conclusion arrived at by the Delhi High Court on the similar issues as raised by the applicants in this OA (casual Announcers), vide Order dated 11.7.2002 and as such the similar issues had already been set at rest after the final verdict of the Apex Court in the matter. The Hon?ble Delhi High Court had quite clearly observed as quoted in para 7 above.

12. Further the subsequent decisions of the Ernakulam Bench and High Court of Kerala at Ernakulam have already been stayed as per the decision of the Hon?ble Supreme Court

(supra).

13. The applicants in this case are agitating their claim on the basis of aforesaid decision of Ernakulam Bench of this

Tribunal as well as of the Hon?ble High Court of Kerala at Ernakulam. However, the fact is that High Court of Kerala has also observed as under:-

A perusal of the order of the Central Administrative Tribunal shows that, what has been directed is only to finalise the scheme that was stated to be in existence, within an outer limit of six months. The Central Administrative Tribunal has not issued any directions regarding the content of the scheme or the manner in which the scheme has to be formulated. Therefore, we are not satisfied that any prejudice has been caused to the petitioners by the issue of the said direction.

14. Nevertheless, in compliance of the aforesaid directions, the respondents have constituted a Committee which comprises of ADG (A&P, DDG (SW) and Director A-II and the said Committee after extensive deliberation on the issues, gave its recommendations, as quoted above, which were approved by the competent authority. We repeat here that as per the law laid down by the Hon?ble Supreme Court in catena of judgments, the courts have no power to even issue any direction for regularization except as laid down previously.

15. In view of the above facts and circumstances of this case, and the fact that the respondents have constituted a Committee, in pursuance of the aforesaid directions of the Ernakulam Bench of this Tribunal and High Court of Kerala, which comprises of ADG (A&P), DDG (SW) and Director A-II of the respondents' organization and the same Committee after exhaustive deliberation on the issues

gave recommendations to the effect that any attempt for regularization of the services of the applicants is fraught with complications and would jeopardize the interests of the broadcasting organization and further observed that the said Idea is neither administratively feasible nor economically viable and against the principles of natural justice and against the larger public interest and the fact that the said recommendations were accepted by the competent authority.

16. Hence, we do not find any merit in the present OA as the issue of creation of posts has been squarely dealt with by the Hon^{ble} Supreme Court in the case of P.U. Joshi (supra), relevant portion of the same has already been quoted above, and the manner of regularization has also been dealt with by the Apex Court in Uma Devi (supra) and also the fact that the aforesaid decision of the Hon^{ble} Delhi High Court still holds sway, this OA is disposed of in terms of the detailed order passed by the Hon^{ble} Delhi High Court in Batch of cases (C.W.P No.319/2001 and others) vide judgment dated 13.2.2002, which has already been affirmed by the Hon^{ble} Apex Court in SLP No.11855/2002 vide Order dated 11.7.2002.

17. In the result, for the foregoing reasons, the present OA being devoid of merit is dismissed. There shall be no order as to costs.