
(2023) 02 CAT CK 0011

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00260 Of 2018

Purna Chandra Behera

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16, 309, 315, 320, 335

Citation : (2023) 02 CAT CK 0011

Hon'ble Judges : Swarup Kumar Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : D.P. Dhalsamant, D.N. Lenka

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member (J)

1. The grievance of the applicant is that he was engaged as a casual daily wage driver in the office of the Sr. Suptd. Of Post offices Puri Division, Puri vide memo dated 05.01.1999 and continued as such in different spells of time till 18.11.2002. Thereafter, he was engaged as a substitute casual driver for short spells since 2008. Hence, by filing the instant OA, the applicant has inter alia prayed to regularize him in the existing vacancy under Respondent No.2.

2. The respondents have filed their counter wherein by giving the detailed days of work performed by the applicant on daily wage basis as Driver have contested the case of the applicant. It has been submitted that the applicant was neither engaged on such daily wage basis by following due recruitment rules or through open selection. Therefore, his engagement on daily wage basis for short spells in a month with specific condition that he cannot claim for regular engagement/appointment in future. Accordingly, respondents have prayed for dismissal of this OA.

3. Applicant has filed rejoinder more or less reiterating the stand taken in the

OA. It is, however, submitted that the applicant was engaged under different divisions under Respondent No.2 and he also worked during the Covid-10 pandemic and, that, his non-regularization despite availability of vacancy is not in accordance with law. Hence, he has reiterated for grant of relief prayed for in the OA. The respondents have also filed reply to the rejoinder objecting to the claim of the applicant.

According to the Ld. Counsel for the applicant, working for a long period continuously on daily wage casual basis makes a person entitled for regularization and, that if a casual labourer is continuing for a fairly long spell - say two to three years, the presumption arises that there is regular need of his service and, in such a situation, it is obligatory for the authority concerned to examine the feasibility of his regularization and while doing so the authority ought to adopt a positive approach coupled with empathy for the person concerned. In the instant case, since the applicant has been continuing on daily wage basis since 1998, he is entitled to be regularized. In this connection, Ld. Counsel for the applicant has placed reliance to the decisions of the Hon'ble Apex Court in the cases of UOI & Ors. Vs. Debika Guha & Ors, 2001 SC (L&S) 90; Hindustan Machine Tools Vs. M.Rangaeddy & Others, 2000 SCC (L&S) 1039 and Amarkant Rai Vs. State of Bihar & Ors, 2015 Vol-2 SCC (L&S) 679. On the other hand, by reiterating the stand taken in the counter, Ld. Counsel for the respondents have submitted that the decisions relied on by the applicant have no application to the instant case as the applicant was not in continuous engagement on daily wage basis. He was engaged on need basis for some days on different spells and was paid the wages as per the instructions of the DoP&T and, therefore, he cannot claim to be regularized as a matter of right de hors the rules. Hence, he has prayed that the OA being devoid of any merit is liable to be dismissed.

4. After giving in-depth consideration to the arguments advanced by the respective parties perused the records. In the counter, the respondents have furnished the days of work performed by the applicant on daily wage basis, which shows that the applicant was not in continuous engagement as claimed by him even such daily wage basis and, that, he was also not engaged through any valid process of selection or being sponsored through employment exchange. We have gone through the decisions in the case of UOI & Ors. Vs. Debika Guha & Ors, 2001 SC (L&S) 90. In the said case the issue was that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularized. The Tribunal gave direction that the Appellants should determine on the basis of available records the period for which the Respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. The Hon'ble Apex Court held that if it is shown that the applicants have worked for long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption

or not and pass appropriate orders. Similarly, it is seen that in the case of *Hindustan Machine Tools Vs. M.Rangareddy & Others*, 2000 SCC (L&S) 1039, the Hindustan Machines Tools Ltd. engaged casual workers on daily rate basis depending upon the need and exigencies of work. Forty two such casual workers engaged in the unit of the Company at Hyderabad filed the Writ Petition with a prayer to issue a Writ or Order or Direction in the nature of a Writ of Mandamus directing the respondents to regularise their services. The order of the Hon'ble High Court was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court taking into consideration the longer period of the continuous engagement of the employees on casual basis observed that if a casual labourer is continued for a fairly long spell say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization and accordingly directed for framing a scheme making it open to the appellant-Company and the officers concerned to assess the requirement of regular work force in its different units, particularly, the units in which the writ petitioners were engaged over long periods and also the necessity for alleviation of the suffering to which the writ petitioners have been subjected to during all these years and fix the strength of work force so that the workers concerned are able to get the benefit of regular service within a reasonable time. In the case of *Amarkant Rai Vs. State of Bihar & Ors*, 2015 Vol-2 SCC (L&S) 679, it is seen that appellant therein was appointed temporarily in Class IV post of Night Guard, on daily wages vide Office Order dated 04.06.1983 issued by Principal, Ramashray Baleshwar College (for short "College"), Dalsang Sarai, affiliated to Lalit Narayan Mithila University (for short "University"), Bihar. The University vide letter dated 04.07.1985 took a decision to regularize the persons who worked for more than 240 days, and as per the letter dated 30.03.1987, as per which employees who have been working for a period for more than one year need to be regularized. The Principal of the College again vide letters dated 08.01.2002 and 12.07.2004 recommended for absorption of the appellant against the two vacant posts. Hence, the Hon'ble Supreme Court directed for regularization. In the instant case, as discussed above, neither the engagement of the applicant was in accordance with the rules nor he was sponsored through employment exchange. His engagement was also not against any vacant sanctioned post continuously for a longer period. Therefore, it is conclusively established that the case in hand is completely different and distinct to the cases cited by the applicant referred to above and, thus, have no application to the present case. The applicant has also not completed 10 years of continuous service against any sanctioned post.

5. We are reminded by the decision of the Constitution Bench of the Hon'ble Apex Court in the case of *Secretary, State of Karnataka and Ors Vs Umadevi And Others*, (2006) 4 SCC 1, wherein the right of regularization of casual, daily wage and temporary employees have been considered and the some of the observations of Their Lordships are as under:

"10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

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15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

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36. 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. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

6. In view of the facts and law discussed above, we do not find any justifiable ground or reason to allow the prayer of the applicant. Resultantly, the OA stands dismissed leaving the parties to bear their own costs.