

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) NO.5387/2008**

% **Date of Decision : 11.11.2009**

SHIV DULARE Petitioner
Through : Mr. Suwarn Rajan, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through : None

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

% **JUDGMENT (Oral)**

ANIL KUMAR, J.

1. The petitioner impugns the order dated 31.08.2007 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.52/2007, whereby the Tribunal has dismissed the aforesaid Original Application filed by the petitioner under Rule 16 of the CAT (Procedure) Rules, 1987. The aforesaid Original Application had been filed by the petitioner to seek the issuance of a direction to

the respondents to include his name in the seniority list of daily paid labourers for granting temporary status and regularization in accordance with the rules and instructions.

2. It appears that the respondent issued a public notice sometime in the year 1993, whereby it was notified that persons who had worked with Indian Institute for Agricultural Research as daily paid labourers and who could prove that they have worked as daily labourers, could get themselves registered with the institution on or before 31.10.2003 with the certificate of experience for the purpose of preparation of a consolidated seniority list of daily paid labourers for engaging such labourers in future. According to the petitioner, he made the requisite application for registration of his name in the seniority list of daily paid labourers. However, the petitioner states that his name was not so included in the seniority list. He claims that he kept representing to the respondents from time to time before he approached the Tribunal in the year 2007, i.e. after a lapse of 14 years, to seek the aforesaid relief.

3. The Tribunal rejected the original application by observing that the respondents had approached the Tribunal after a lapse of 14 years without even seeking condonation of delay or explaining the delay in approaching the Tribunal. Moreover, the Tribunal relied upon the judgment of the Supreme Court in **State of Karnataka & Ors. v. Umadevi & Ors.** (2006) 4 SCC 1. The Tribunal held that the mere

repeated representations made by the petitioner would not extend the bar of limitation. It relied on **Umadevi** (supra) wherein it held that a casual labour would have no legal right to seek engagement and can be engaged or disengaged based upon the availability or non-availability of work. Since the appointment of casual labour is not against any post there is no relevance of seniority in their case which can be upheld in law in the absence of any rule which stands the test of Umadevi's case. Consequently, the Tribunal dismissed the Original Application both on the ground of limitation and on the ground that the petitioner had no legal right to seek the inclusion of his name in the said seniority list of casual labourers.

4. Learned counsel for the petitioner submits that in view of the decision of the Supreme Court in **Umadevi** (supra), he cannot seek the grant of temporary status or regularization. However, the petitioner is entitled to invoke Article 14, inasmuch as, other similarly placed casual labourers had been included in the seniority list maintained by the respondents for the purpose of deploying casual labourers as and when the need arises. He further submits that a similar direction had been issued by the Tribunal in other cases. He seeks to place reliance on the decision of the Supreme Court in **U.P. State Electricity Board v. Pooran Chandra Pandey & Ors.** 2007 (12) SCALE 304.

5. Having heard learned counsel for the petitioner, we are of the view that there is no merit in this petition and the same deserves to be

dismissed. The Constitution Bench of the Supreme Court in **Umadevi** (supra) rendered the said decision to specifically deal with claims made by casually employed persons on the basis of parity i.e. by invoking Article 14 of the Constitution of India. The Supreme Court observed that bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. The Supreme Court further observed in para 14: -

“14. The argument on behalf of some of the respondents is that this Court having once directed regularization in the Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka (1990) 2 SCC 396 all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.”

6. While considering its earlier decision in **State of Haryana v. Piara Singh** (1996) 2 SCC 118, the Supreme Court in para 26 of the said decision, inter alia, observed as follows:

“26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent — the distinction between regularization and making permanent, was not emphasized here — can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete.....”

7. Paras 43 and 45 of the said decision are relevant and are reproduced below:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or

casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. **It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.** The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the

constitutional and statutory mandates.
(emphasis supplied)

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned 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 arm's 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 (sic) 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."

8. The purport of the above observations of the Supreme Court, in our view, is that a casually employed person cannot claim any right to seek re-employment or preference for re-employment merely on account of his earlier casual employment.

9. The decision of the Supreme Court in **Pooran Chandra Pandey** (supra), in our view, has no application in the facts of this case. In that case the facts before the Supreme Court were materially different, inasmuch as, it had been decided that the employees of the cooperative electric supply society should be deemed to be the employees of the electricity board with continuity of their service in the society. They were treated as fresh appointees by the electricity board when their services were taken over by the electricity board. It was in that background that the Supreme Court rendered the said decision.

10. In our view, the aforesaid observations of the Constitution Bench decision in ***Umadevi*** (supra) squarely apply to the facts of the present case and the decision in ***Pooran Chandra Pandey*** (supra) has no application to the facts of this case. Moreover, the petitioner has not explained the immense delay in approaching the Tribunal and the Original Application was barred by limitation. We may notice that even before us no endeavour has been made by the petitioner to explain the immense delay in approaching the Tribunal.

11. We see no merit in this petition. Dismissed.

ANIL KUMAR, J.

NOVEMBER 11, 2009
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VIPIN SANGHI, J.