

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

% Judgment delivered on 17.02.2012

+ **W.P.(C) 830/2012**

SHRI ARUN KUMAR ... Petitioner

versus

UNION OF INDIA AND ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Jasmine Ahmed

For Respondent No.1 : Mr Baldev Malik

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED (ORAL)

1. The petitioner is aggrieved by the order dated 28.04.2011 passed in OA No.3451/2010 by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby the petitioner's said Original Application was dismissed. The petitioner had claimed regularization in a suitable group 'D' post on the allegation that persons junior to him had been regularized.

2. The petitioner had based his case on a scheme issued by the Government of India known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993. The petitioner had also based his claim on a decision of the Supreme Court in the case of Secretary, State of Karnataka & Others v. Umadevi & Ors. : 2006 (4) SCC 1.

3. The facts of the case are that the petitioner was engaged as a casual worker on 01.02.1995 in the Income-tax office in district Dehradun. He was disengaged

on 31.12.2005. The petitioner claimed that since, according to him, he had been in continuous service for over ten years, the benefit under the 1993 Scheme as well as the decision of the Supreme Court in Uma Devi's case (*supra*) ought to have been given to him and he ought to have been regularized in a suitable group 'D' post. The Tribunal considered the averments made in the Original Application as also the counter-affidavit filed on behalf of the respondents. The Tribunal noted that in paragraph 5(e) of the reply filed on behalf of the respondents, a statement had been made that the petitioner was engaged as Safaiwala and that it was a part-time job. He was engaged for one hour in the morning and one hour in the evening. This obviously meant that the petitioner did not have a full-time job. The Tribunal also noted that the petitioner had not controverted this statement of fact which contained in the counter-affidavit filed on behalf of the respondents. This is so because the petitioner had not filed any rejoinder nor had any request been made before the Tribunal at the time of hearing to enable the petitioner to controvert the said fact on affidavit. Thus, we feel that the major impediment in the petitioner's case is that he was a part-time casual worker and this fact has not been denied by him on affidavit.

4. Apart from this, we find that the Tribunal has adequately addressed the issue with regard to the said 1993 Scheme. As pointed out in paragraph 6 of the impugned decision, the scheme has specifically indicated in paragraph 4(i) thereof that temporary status would be conferred on all casual labourers who were in employment on the date of issuance of the OM and who had rendered continuous service of at least one year which meant that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing a 5-day week). The scheme was effective on 01.09.1993. It is an admitted position, apart from the question that the petitioner was a part-time casual worker, that the petitioner was not working on 01.09.1993 inasmuch as he was engaged as a

Safaiwala only on 01.02.1995. Therefore, the Tribunal has rightly concluded that the scheme would not have any application to the petitioner.

5. Insofar as the decision in *Uma Devi's case (supra)* is concerned, that would also have no application to the petitioner's case inasmuch as the decision came in 2006. The decision was rendered on 10.04.2006 whereas the petitioner had also been disengaged on 31.12.2005. Therefore, the said decision would also not apply to the petitioner. Moreover, the Tribunal specifically found that the benefit of *Uma Devi's case (supra)* would be available to those employees who had worked for ten years or more on duly sanctioned post, without the benefit of protection of any interim order of any Court or Tribunal and the appointment of such employee was not irregular and not illegal. The Tribunal has dealt with this aspect of the matter in the following manner:-

“11. Now, we may advert to the second contention raised by the learned counsel for the applicant to the effect that the respondents have regularized the services of 88 persons in terms of the judgment rendered by the Hon'ble Apex Court in Umadevi's case (supra), as such the services of the applicant being senior to the persons so regularized vide order dated 31.1.2001 could have also been regularized. The submission made by the learned counsel for the applicant deserves outright rejection, inasmuch the applicant was only a part time casual worker, as such he is not entitled to the benefit of the judgment of the Hon'ble Supreme Court in Umadevi's case (supra). It may be stated here that the protection, which has been given by the Apex Court in the said case is with respect to those employees, who have worked for 10 years or more on a duly sanctioned posts, without the benefit of protection of the interim order of any Court or Tribunal and appointment of such employee was irregular and not illegal. Thus, the effect of direction of the decision, referred to above, which judgment was rendered on 10.4.2006, was to the effect that all persons, who have worked for more than 10 years as on 10.4.2006 without

protection, are entitled to be considered for regularization. It is not the case of the applicant that they were appointed against a regular post of Safaiwala and he fulfilled the requisite qualification meant for the said post and has worked in the said capacity upto 10 years. Rather the material placed on record and more particularly the stand taken by the respondents in the reply is that the applicant was only engaged in part time capacity for few years. Thus, the averment made by the respondents in the reply has not been controverted by the applicant by filing rejoinder. Burden was upon the applicant to prove his case and vague averment made by the applicant that he was working on casual basis and completed 10 years of service and also he was conferred with the temporary status cannot be accepted.

12. The example of 88 employees, who have been regularized in terms of the judgment of the Hon'ble Apex Court in Umadevi (supra) vide order dated 30.1.2009 (Annexure A-2) reveals that those persons were working against the post of Peon/Chokidar, etc. and have also put in service of 10 years. As such their services were regularized whereas 14 workers, who were not eligible as per the recruitment rules of Group 'D' post, were not regularized. Thus, the applicant cannot make any grievance regarding the regularization of other employees vide order dated 30.1.2009."

6. Thus, in any way we look at the case, the petitioner's claim for regularization cannot be upheld.

7. The writ petition is without any merit. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

FEBRUARY 17,2012/'sn'