

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

Judgment reserved on: 28.10.2014

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Judgment delivered on: 11.11.2014

+ **W.P.(C) 7808/2012 & C.M. No.19651/2012**

RITU KUSHWAHA AND ORS

..... Petitioners

Through: Mrs. Rekha Palli and Ms. Garima
Sachdeva, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vikas Mahajan, CGSC along
with Mr. Vishal Mahajan, Mr. S.S.
Rai, Mr. Rohan Gupta, Mr. A.N.
Singh and Mr. Abhishek Khanna,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioners have preferred the present petition under Article 226 of the Constitution of India to assail the order dated 29.10.2012 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.3949/2011, whereby the Tribunal has dismissed the aforesaid application. The said Original Application had been preferred to seek regularization of the services of the petitioners with effect from the date they completed ten years of service along with consequential benefits.

2. Before the CAT, the case of the petitioners was that they are all working in the Ministry of Defence as daily wagers since 2000 as Safaiwalas/ Labourers. Their names were sponsored by Employment Exchange and they were interviewed by the Selection Committee. Since their services were not regularized and they continued to be deprived of the regular pay scale and other benefits attendant to regular service, and they claim that they were rendering the same service as other regularly recruited Safaiwalas/ Labourers, they made representations to the respondents seeking regularization. The petitioners claimed that on their representations, the issue was examined and the then Additional Solicitor General had given a written opinion on 28.03.2011 that the services of the petitioners be regularized. While doing so, the case of one Smt. Rajbala was cited to justify the petitioners' claim for regularization. Smt. Rajbala had been appointed on compassionate basis initially as a daily wager. Since she was not regularized, she had preferred O.A. No.1550/2008 before the CAT, which was allowed. The said order of the CAT was confirmed by this Court in W.P.(C.) No.8518/2009. The respondents had accepted that decision and implemented the same in respect of Smt. Rajbala.

3. The further case of the petitioners was that in terms of the judgment of the Supreme Court in *Secretary, State of Karnataka & Others Vs. Umadevi & Others*, (2006) 4 SCC 1, since the petitioners have rendered over ten years of service as daily wagers, they were entitled to be considered for regularization under a scheme, to be framed by the respondents.

4. Before the Tribunal, the stand taken by the respondents was that the engagement and regularization of casual labourers was governed by the

Department of Personnel & Training (DOP&T) O.M. dated 07.06.1988, which provided for regularization of casual labourers into Group-D posts. However, as per the 6th Central Pay Commission (CPC) report and consequent instructions issued by the Department of Expenditure dated 24.12.2008, all Group-D posts were required to be upgraded to Group-C posts in a prescribed manner and, henceforth, recruitments were made in Pay Band-I (Grade Pay Rs.1800) Group-C posts of Multi-Tasking Staff (MTS).

5. The further case of the respondents was that the recruitment to the Group-C posts had to be undertaken through the Staff Selection Commission (SSC), and minimum educational qualification for appointment to the post of MTS prescribed is Matriculation or ITI pass. Thus, it is imperative for the Ministries/ Departments to revise the earlier recruitment rules pertaining to Group-D posts and issue fresh recruitment rules for the post of MTS keeping in view the model recruitment rules issued by the DOP&T. Secondly, regularization of casual labourers to Group-D posts was no longer permissible under the O.M. dated 07.06.1988.

6. The further case of the respondents was that *Umadevi* (supra) permitted framing of one time scheme for regularization and in the light of the said decision read with O.M. dated 11.02.2006, the following conditions have to be fulfilled before a daily wager could be regularized:

- “(i) *Who were duly qualified persons in terms of the statutory recruitment rules for the post;*
- (ii) *Who had worked for ten years or more as on 10.04.2006;*
- (iii) *Who were engaged against duly sanctioned posts; and*

(iv) Who were not under the cover or orders of Courts or Tribunals.”

7. Before the CAT, the respondents admitted that at the time of closing of the year 2010-11, there were 37 vacancies of MTS (now Group-C, previously Group-D). The respondents had sent a requisition to the SSC for filling up the 37 vacancies from eligible candidates selected through direct recruitment. In response, SSC had sent dossiers of 24 qualified candidates for the post of MTS, which were under process. The respondents had also disclosed that they had made efforts time and again to appoint the petitioners against the available vacancies after granting one time relaxation in age limit and educational qualifications by taking up the matter with the DOP&T. However, the DOP&T had not given its concurrence.

8. The petitioners had pointed out before the Tribunal that apart from the case of Smt. Rajbala, there were cases of few other daily wage employees working in the DOP&T, who had been regularized by the DOP&T. An additional affidavit had been filed by the respondents before the Tribunal, wherein it had been stated:

“8. As regards the point on regularization of casual labourers in the Department of Personnel and Training in 2011, it is stated as under:-

- (i) Three casual employees of canteen were regularized as wash boy (Dish Cleaner) in the Pay Band Rs.5200-20200/- + Grade Pay Rs.1800/- in December, 2011. No clarification/ concurrence of Director (Estt), DoP&T was obtained.*
- (ii) The three employees has not been regularized as Peon (erstwhile – Group D) but was Wash Boy (Dish Cleaner) in Departmental Canteen. As per Recruitment Rules for*

filling the post of Wash Boy (Dish Cleaner) the desirably eligibility criteria is primary standard pass & it is filled by DR through Local Employment Exchange. The age limit for Direct Recruit from Local Employment Exchange is 18-27 years, relaxable for government servants' upto the age of 40 years & upto 45 years for SC/ST candidates.

- (iii) These casual employees were working in the canteen since 1998-2000. One of them is SC candidate, others are general candidate. All the 3 (Three) casual employees were duly qualified in terms of statutory Recruitment Rules for the post of Wash Boy (Dish Cleaner) & also had more than 10 years of service against that post as Daily Wagers. All these years they have performed the duties of Wash Boy (Dish Cleaner) in the Departmental Canteen and DoP&T has also allowed daily rated wages at 1/30th of the pay at the minimum of the relevant pay scale + DA for work of 8 hours a day to them.*
- (iv) There were 6 vacancies which have to be filled through Local Employment Exchange, out of which 3 has been filled by regularizing the casual workers who were working in the Departmental Canteen and had valid registration in Local Employment Exchange and having desirable educational qualification.*
- (v) The three casual employees fulfil the eligibility condition in general & also held a valid employment exchange registration. As they all were fulfilling the eligibility condition in general & were serving in the Department as casual worker for the last 10 years they have been appointed/ regularized as Wash Boy (Dish Cleaner) in the Departmental Canteen."*

9. As the CAT rejected the claim of the petitioners even in the face of the materials placed on record, the petitioners have preferred the present writ petition.

10. Learned counsel submits that there is no difference between the petitioners, on the one hand, and the case of Smt. Rajbala and the other cases where the casual employees were regularized as Wash Boy (Dish Cleaner).

11. Attention had also been drawn to the order dated 16.12.2011 issued by the DOP&T in respect of regularization of Sh. Minto, Sh. Rajesh Kumar & Sh. Brajesh Kumar as Wash Boy/ Canteen Attendant. Learned counsel further submits that even in the Ministry of Finance, 21 casual employees have been regularized vide office order No.2/2013 dated 04.01.2013 on the post of MTS. Office orders issued in the case of large number of casual employees in different Ministries of the Central Government have been placed on record, whereunder Group-D casual employees were regularized as MTS. Learned counsel further submits that merely because under the 6th CPC report, the Group-D posts were abolished and recruitment henceforth could be made only to Group-C posts of MTS through the SSC, it did not mean that the cases of casual employees working in Group-D posts for over a decade would not be taken up for regularization in terms of the judgment of the Supreme Court in *Umadevi* (supra). She submits that the requirements of educational qualification prescribed for Group-C posts of MTS would not be applicable to the cases of casual employees seeking regularization on account of their over ten years continuous service. She submits that it is for this reason that several Ministries, including the DOP&T had regularized the services of casual employees upon their fulfilling the criteria of meeting the educational qualification as prescribed for Group-D posts, and of rendering of ten years continuous service as casual employees.

12. On the other hand, the submission of learned counsel for the respondents is that the impugned order is well-reasoned and does not call for interference. Learned counsel submits that regularization cannot be granted *de hors* the scheme and the recruitment rules. Since the Group-D posts no longer exist – in view of the 6th CPC report, which abolishes the said posts and converts them to Group-C posts, the petitioners cannot claim regularization as MTS, which is a Group-C post and is to be filled through SSC. The petitioners do not fulfill the educational qualification of Matriculation required for being appointed against Group-C post of MTS.

13. Having heard learned counsel for the parties and perused the impugned order, and the materials placed on record before the CAT, we are of the view that the impugned order cannot be sustained as, in our view, the claim for regularization made out by the petitioners is completely justified in the facts of the case. It is not in dispute that the petitioners were recruited initially as daily wagers after interview. Their names were drawn from the Employment Exchange. All of them rendered more than ten years of casual service. Consequently, they are entitled to be considered for regularization in terms of the directions issued by the Supreme Court in ***Umadevi*** (supra) under a scheme, to be framed by the respondents. There can be no doubt that but for the fact that the 6th CPC report led to abolition of Group-D posts, and their merger with the post of MTS in Group-C, the case of the petitioners for regularization would have been positively considered. The primary reason given by the respondents is that on account of the abolition of Group-D posts and their conversion/ merger to Group-C posts of MTS – which are required to be filled through the SSC upon fulfillment of the

eligibility norms, the case of the petitioners for regularization cannot be considered.

14. In our view, this reasoning is fallacious. The petitioners are not seeking recruitment to Group-C posts in an open recruitment process. These petitioners may not even be eligible to apply in response to any such recruitment process as all of them may be overage by now, and most of them may not even possess the minimum educational qualification of Matriculation. The petitioners fall in an altogether different class. They are seeking regularization of their services on account of having rendered over ten years of casual service. It is not the respondents' case that they did not meet the educational qualification required of them, to be recruited against Group-D posts of Safaiwalas/ Labourers. Merely because, in the meantime, the Group-D posts stand abolished, it does not mean that their right to be considered for regularization would be defeated. Such class of casual employees would have to be considered for regularization upon completion of ten years of continuous service by applying the same criteria of educational qualification as was applicable to them at the time of initial recruitment as casual employees. The conversion of Group-D posts into Group-C posts of MTS is an act of the respondents, and if the effect of regularization is that they would be entitled to the pay scale and benefits available for Group-C posts, so be it.

15. It is rather shocking and surprising that, on the one hand, the DOP&T sought to reject the cases of the petitioners when respondents No.1 & 2 favourably recommended the same for regularization, on the other hand, the DOP&T itself proceeded to regularize several casual employees, who were

similarly placed as the petitioners. There is absolutely no justification for adoption of these double standards. It appears that the DOP&T does not practice what it preaches.

16. We also find from the record that scores of other casual employees have since been regularized by granting benefit of the judgment of the Supreme Court in *Umadevi* (supra). The Ministry of External Affairs had issued office order dated 10.09.2013 regularising the services of 44 casual employees as MTS. Similarly, 21 daily wagers were regularized as MTS on 04.01.2013 by the Ministry of Finance, Department of Revenue. On 27.01.2009, the Ministry of Finance, Department of Economic Affairs issued an office order regularizing the services of 5 casual labourers as Peons. Ministry of Power regularized the services of 12 casual employees – as is evident from their reply given to a query under the Right to Information (RTI) Act, dated 10.06.2013. The Ministry of Information & Broadcasting regularized the services of 24 casual employees – as is evident from their reply given to a query under the RTI Act, dated 25.06.2013. Similar orders have been issued for regularization by the Ministry of Home Affairs on 15.02.2010 in respect of 13 casual employees.

17. We are of the view that there is no substantial difference in the case of the petitioners with that of Smt. Rajbala. Merely because Smt. Rajbala was appointed on compassionate grounds, does not cast any greater obligation on the respondents to regularize her services, in comparison with the petitioners. She was directed to be regularized as & when a vacancy became available. That decision was accepted by the respondents. The respondents cannot discriminate and treat the petitioners differently from Smt. Rajbala.

18. We have already noticed that the stand of the respondent before the CAT was that at the time of closing of recruitment year 2010-11, there were 37 vacancies of MTS, for which a requisition had been sent to the SSC. In response, SSC had sent dossiers of 24 qualified candidates. From the counter-affidavit, it appears that the said process has not been completed. Pertinently, this Court while issuing notice in this petition on 17.12.2012 directed maintenance of status quo with regard to the petitioners. The said order has continued to operate. Therefore, it appears that there are sufficient number of regular vacancies available, against which the services of the petitioners could be regularized.

19. In view of the aforesaid discussion, we allow the writ petition and quash the impugned order of the Tribunal. We further direct that the respondents shall consider the cases of each of the petitioners for regularization in terms of their policy/ scheme framed for regularization in the light of the judgment of the Supreme Court in *Umadevi* (supra). There shall be no order as to costs.

(VIPIN SANGHI)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

NOVEMBER 11, 2014

B.S. Rohella