

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

O.P. (CAT).No. 163 of 2015 (Z)

AGAINST THE ORDER IN O.A. NO. 1046/2012 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 29.09.2015.

PETITIONER(S):

1. LATHA S., AGED 46 YEARS,
W/O.N.JAYANTHAN, CASUAL LABOUR,
O/O.PRINCIPAL ACCOUNTANT GENERAL (A&E), KERALA,
THIRUVANANTHAPURAM, RESIDING AT PUTHUVALPUTHANVEEDU,
MANVILA, KULATHOOR P.O., TRIVNANDRUM-695583.
2. REMANY.G. AGED 52 YEARS,
W/O.P.SASIDHARAN, CASUAL LABOUR,
O/O.PRINCIPAL ACCOUNTANT GENERAL (A&E), KERALA,
THIRUVANANTHAPURAM, RESIDING AT NIRVIRTHI BHAVAN,
KADAVILAVEEDU, SARK-A-22A, PEYAD P.O.,
THIRUVANANTHAPURAM-695573.
3. JAYALAKSHMI AMMA.S., AGED 45 YEARS,
W/O.RAJENDRAN.J., CASUAL LABOUR,
O/O.PRINCIPAL ACCOUNTANT GENERAL (A&E), KERALA,
THIRUVANANTHAPURAM, RESIDING AT J.R.BHAVAN,
THOTTAKKAD P.O., KALLAMBALAM,
THIRUVANANTHAPURAM-6955605.
4. JAYANTHI.G., AGED 47 YEARS,
W/O.VIJAYAN.N., CASUAL LABOUR,
O/O.PRINCIPAL ACCOUNTANT GENERAL (A&E), KERALA,
THIRUVANANTHAPURAM, RESIDING AT KUTTAMPATTUMELE,
APERNA SADANAN, PERUMPAZHATHUR, ARUVIPURAM ROAD,
THIRUVANANTHAPURAM-695126.
5. RADHAMANI.P. AGED 54 YEARS,
W/O.THULASEEDHARAN, CASUAL LABOUR,
O/O.PRINCIPAL ACCOUNTANT GENERAL (A&E), KERALA,
THIRUVANANTHAPURAM, RESIDING AT ANSI BHAVAN
KONTHALLOOR, CHIRAYINKEEZHU P.O.,
THIRUVANANTHAPURAM-695304.

P.T.O.

6. B.VIMALAMMA, AGED 43 YEARS,
W/O.SURENDRAN NAIR, CASUAL LABOUR
O/O.PRINCIPAL ACCOUNTANT GENERAL(C&CA), KERALA,
THIRUVANANTHAPURAM, RESIDING AT SOWMYA SADANAM,
CHARUVILA, THIRUVANANTHAPURAM.
7. S.GIRIJAKUMARI, AGED 53 YEARS,,
D/O.SANKARA PILLAI, CASUAL LABOUR
O/O.PRINCIPAL ACCOUNTANT GENERAL(C&CA), KERALA,
THIRUVANANTHAPURAM, RESIDING AT SAROJ BHAVAN, TC 8/656,
TIRUMALA P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.M.R.HARIRAJ
SRI.P.A.KUMARAN
SMT VINITHA B
SRI.K.RAJAGOPAL

RESPONDENT(S):

1. PRINCIPAL ACCOUNTANT GENERAL (C&CA),
THIRUVANANTHAPURAM-695 039.
2. PRINCIPAL ACCOUNTANT GENERAL(A&E),
THIRUVANANTHAPURAM-695 039.
3. COMPTROLLER AND AUDITOR GENERAL OF INDIA,
NEW DELHI-110 001.

R1-R3 BY ADV. SRI.BABU P.L., CGC
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 19-10-2015, THE COURT
ON 28.10.2015 DELIVERED THE FOLLOWING:

P.T.O.

OP (CAT).No. 163 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1: A TRUE COPY OF FINAL ORDER DATED 29.9.2015 IN O.A.1046/2012 OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT-P2: A TRUE COPY OF ORIGINAL APPLICATION FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, BY THE PETITIONERS ALONG WITH THE ANNEXURES.

EXHIBIT-P3: A TRUE COPY OF REPLY STATEMENT DATED 27.12.2012 ALONG WITH THE ANNEXURES THEREOF.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.163 of 2015

Dated this the 28th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

This Original Petition is filed challenging the order of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.1046 of 2012 dated 29.09.2015, by which the Tribunal refused to grant the reliefs sought for in the Original Application, challenging the alleged attempt of the Respondents to change the nature of their engagement into an outsourcing arrangement and to terminate the services of the petitioners.

2. Brief facts required for the disposal of the Original Petition are as follows:

3. Petitioners are casual labourers who had been in service of the 2nd Respondent. Petitioner No.1 commenced service on 08.04.1994 and petitioners 2 and 7 commenced service in April, 1994 and all other petitioners have commenced service on various dates during February, 1995.

However, from May, 1995, the petitioners were disengaged and certain fresh persons were inducted into service by the Respondents. Aggrieved by the disengagement and also against the refusal to grant temporary status, some of the petitioners approached the Tribunal by filing O.A. No.912 of 1996. The said O.A. was disposed of directing to consider the representations to be made by the applicants therein for temporary status, and further directed to engage the applicants as casual labourers on the basis of their length of service in preference to persons having lesser period of service and outsiders, subject to availability of work.

4. Even though the said order has become final, same was not implemented immediately. But the applicants therein were re-engaged from 1999. It is the further case of the petitioners that even after such re-engagement, petitioners were not being engaged based on their seniority. This led to the filing of O.A.No.1433 of 1998 and other connected cases by some of the petitioners along with certain other persons. In the reply affidavit filed to the said Original Application, Respondents produced the seniority list of the casual employees working under them as on 23.05.1995, which is

marked as Annexure-A2.

5. Taking into account Annexure-A2 and the submission of the Respondents expressing their willingness to engage the petitioners reflected in the said seniority list, the Tribunal disposed of the O.A. directing the Respondents to engage the petitioners for casual work as and when work was available in accordance with the seniority position reflected in Annexure-A2.

6. Though initially the final order in the aforesaid O.A. was not complied with, later on the said order was strictly followed and all the petitioners were engaged. Thereafter, Annexure-A2 order of seniority was revised and Annexure-A4 dated 20.12.2000 was issued. Matters being so, Respondents notified the vacancies of Multi Task Staff (MTS) under them. The age limit prescribed for the said recruitment was 18 to 27 years as on the last date for receipt of applications. Thereupon, petitioners submitted applications for the above vacancies. It is the case of the petitioners that when details of casual engagements of the petitioners were forwarded from the office of the 2nd Respondent, it was stated that the documents with respect to the engagement of the petitioners

during 1994 and 1995 were not available. In that circumstances, petitioners were treated as not qualified to appear for selection to the MTS cadre. Being aggrieved, petitioners 1 to 6 filed O.A.No.35 of 2012 before the Tribunal. But the Tribunal declined interim relief to the said petitioners and even though same was challenged before this Court by filing a writ petition, same dismissed. The said Original Application was heard along with the impugned order and dismissed by a separate order.

7. Later, petitioners and other casual labourers were called for a meeting and conveyed that their engagement cannot be continued unless they agree to be working as outsourced employees. The decision in the said meeting was recorded as minutes of the meeting, which is produced as Annexure-A6. Petitioners contend that even though in Annexure-A6 it is said to be on the basis of the agreement of the petitioners, same is not correct. It is the contention of the petitioners that there are vacancies and work of housekeeping is available. Therefore, it is contended by the petitioners that they are entitled to be continued in preference to freshers and juniors as per the directions in the inter-parte final orders of

the Tribunal referred to above and the violation of the directions contained in the said orders are illegal and unjust.

8. At the time of admission of the Original Application that led to the impugned order in this Original Petition, an interim order of *status quo* was directed to be maintained and accordingly the petitioners continued in service and even now they are engaged for doing housekeeping works. It is thus aggrieved by Annexure-A6 minutes and the attempt of the Respondents to disengage them, the Original Application was filed.

9. Respondents have opposed the claims raised by the applicants and filed a reply affidavit contending that the applicants were not within the age limit for MTS recruitment despite granting regularization for the period of their casual service. It was further contended that a policy decision was taken by the Respondents that the cleaning works were to be routed through outsourcing agencies. The Respondents have relied on the judgments of the Hon'ble Apex Court in '**State of Karnataka v. Umadevi & Others**' [(2006) 4 SCC 1] and '**State of Himachal Pradesh v. Sureshkumar Verma**' [JT 1996(2) SC 455] and contended that petitioners cannot be

directed to be engaged. However, learned Tribunal has dismissed the O.A. holding that the petitioners were never appointed against any post and that they were not selected after following the regular recruitment procedure and further that MTS personnel have already been appointed. It was also found by the Tribunal that the works that were being carried out by the petitioners and other daily wagers had also been assigned to those MTS personnel. It was also found by the Tribunal that only a very few works like AC cleaning and allied activities are proposed to be outsourced. It was also held that the policy decision of the Respondents to outsource the work, in the changed circumstances, cannot be treated as violative of the directions issued by the Tribunal in earlier Original Applications. Therefore, the Tribunal found that the claim of the petitioners for regularization could not be sustained. It is thus aggrieved by the said order of the Tribunal, this Original Petition is preferred.

10. Heard the learned counsel for the petitioners, Sri. M.R. Hariraj and perused the pleadings and the evidence on record.

11. Learned counsel for the petitioners has contended that the petitioners were casual employees of the Respondents at least for the past 20 years and therefore the attempt of the Respondents to disengage them and engage other freshers is absolutely an unfair labour practise. It is further contended that the attempt of the Respondents is in absolute violation of the order of the Administrative Tribunal in the earlier proceedings. In the earlier proceedings, the Respondents have undertaken that the petitioners will be engaged as and when there was availability of work. Learned counsel has also contended that in view of the long continuance in the establishment, a right is accrued to the petitioners enabling them to continue till they attain the age of superannuation.

12. Learned counsel for the petitioners further contended that the dictum laid down in ***Umadevi's case*** (*supra*) cannot be said to be an absolute legal principle in the matter of appointment, especially due to the fact that the subsequent decisions in '***Amkant Rai v. State of Bihar and others***' [(2015) 8 SCC 265], ***Umadevi's case*** was taken into account and the authorities were directed to notionally regularize the services of the appellant retrospectively with

effect from 03.01.2002, or the date on which the post became vacant. To substantiate the contentions raised, learned counsel also invited our attention to the judgment in '**Bharat Sanchar Nigam Limited v. Bhurumal**' [(2014) 7 SCC 177] and specifically to paragraphs 34 and 35, and it was held in paragraph 34 that, it is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying the retrenchment compensation, as is held in **Umadevi's** case *supra*. Therefore, it was held therein that no useful purpose is going to be served reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. Thereupon, it was held in paragraph 35 as follows:

"35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground

that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied”.

13. So also, learned counsel has invited our attention to the judgment in '**Ajaypal Singh v. Haryana Warehousing Corporation**' [(2015) 6 SCC 321] and specifically to paragraphs 10 and 16 of the said judgment, wherein the Hon'ble Apex Court has considered the ramifications of engagement of workers exceeding 240 days and the requirements contained under Sec.25-F, 25-G and 25-H of the Industrial Disputes Act. Learned counsel has also invited our attention to the judgment in '**Ghaziabad Development Authority and others v. Vikram Chaudhary and others**' [(1995) 5 SCC 210]. In paragraph 6 of the said judgment, it was held that so long as the appellant had work on hand, it

has no power to terminate the contingent employees engaged on daily wages and that in the event the appellant needs to terminate their services, the principle of last come first go should be followed and in the event of there being need for re-employment, preference be given to the displaced respondents and it was held that the observation made by the learned Judge of the High Court was consistent with the well-established principles of natural justice, equity and good conscience.

14. We have appreciated the submissions made by the learned counsel for the petitioners and have gone through the principles laid down by the Apex Court in the judgments *supra*. From the arguments advanced by the learned counsel, what we gather is that since the Respondents have engaged the petitioners for the past 20 years, as of right, they are entitled to continue in service in preference to the proposed freshers being appointed by resorting to outsourcing done through contractors. The contention of the learned counsel that if and when work is there, workers have to be appointed, then the petitioners are the rightful persons to be engaged, especially due to the fact that the Tribunal in earlier proceedings have

directed so.

15. Learned counsel also contended that taking into account the age factor of the petitioners, they will not get engagement or employment elsewhere and therefore the actions of the Respondents are violative of Articles 14 and 16 of the Constitution of India. Learned counsel further contended that the judgment in '**Umadevi's case**' is not a replacement to the fundamental right of the petitioners conferred by the Constitution under Articles 14 and 16. Having considered the submissions so made by the learned counsel, we are of the considered opinion that merely because the petitioners were engaged for casual work by the Respondents, that by itself will not convert as a right or continuance of the casual work or regularization of the petitioners in any manner. In the earlier proceedings also the Tribunal has directed the Respondents to engage the petitioners if and when casual work was available in accordance with the seniority list drawn by the Respondents. These circumstances will not enable the petitioners to claim continuous work as casual employees when there is a change in the policy of the Respondents to carry on Group-D works by resorting to outsourcing. Further, we are

also of the opinion that Respondents have taken a policy decision to disengage Group-D casual workers and outsource the available casual work. The Tribunal has also found that the petitioners can also seek engagement through the contractors engaged while outsourcing the work.

16. We also find force in the contention of the Respondents before the Tribunal that most of the work that was being carried out by these Group-D workers are now being done by MTS and therefore whatever work remaining of casual nature is only Air-conditioning repair and other allied works which can be carried out through outsourcing. On a perusal of the records, what we find is that the Respondents have taken a policy decision to outsource the remaining work Group-D other than carried out by the MTS. We cannot find fault with the Respondents taking such a policy decision in order to reconcile with the financial situations and constraints.

17. The principles laid down in the judgments *supra* are all in different factual situations, contexts and circumstances. We do not think that the petitioners are entitled to get the benefits of the principles laid down in the said judgments. Moreover, petitioners cannot compel the Respondents to

engage them continuously for any number of years for executing the casual work available. Taking into account all these cumulative circumstances, we find that there are no illegalities or other legal infirmities in the order passed by the Tribunal.

Resultantly, the Original Petition fails and it is accordingly dismissed.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-
28.10.2015