

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 23711 of 2014 (L)

PETITIONER(S):

1. **MOHAMMED FATHAHUDHEEN C.C.,
CHAMAYATH CHERIYANNAL, ANDROTH,
LAKSHADWEEP ISLAND.**

**BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON**

RESPONDENT(S):

1. **UNION OF INDIA,
REPRESENTED BY IT'S DIRECTOR, DEPARTMENT OF PORT,
SHIPPING & AVIATION, U.T.OF LAKSHADWEEP, KAVARATTI.**
2. **THE ADMINISTRATOR, U.T. OF LAKSHADWEEP, KAVARATTI.**
3. **MANAGING DIRECTOR,
LAKSHADWEEP DEVELOPMENT CORPORATION LTD.,
U.T. OF LAKSHADWEEP, KAVARATTI.**
4. **GENERAL MANAGER,
LAKSHADWEEP DEVELOPMENT CORPORATION LTD.,
U.T. OF LAKSHADWEEP, KAVARATTI.**

BY ADV. SRI.S.RADHAKRISHNAN,SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE EMPLOYMENT NOTICE DATED 1/12/2002 ISSUED BY THE R3
- P2: COPY OF SELECTION/CHECK LIST DATED 9/12/2002
- P3: COPY OF OFFICE ORDER DATED 16/1/2008 ISSUED BY THE R4
- P4: COPY OF REPRESENTATION DATED 29/6/09 SUBMITTED BY THE 1ST APPLICATIONS TO THE R3
- P5: COPY OF REPRESENTATION DATED 23/6/11 GIVEN TO THE R4
- P6: COPY OF THE REPRESENTATION DATED 24/12/11 FOR REGULARIZATION OF SERVICE
- P7: COPY OF THE ORDER DATED 12/3/12 ISSUED BY THE R3 TO THE 2ND APPLICANT
- P8: COPY OF THE RE-TRANSFER ORDER DATED 7/7/12 ISSUED BY THE R3 TO THE 2ND APPLICANT
- P9: COPY OF THE REPRESENTATION 28/4/12 SEEKING FOR REGULARIZATION
- P10: COPY OF THE REPRESENTATION DATED 3/10/12 TO THE R3
- P11: COPY OF LETTER ISSUED BY R3 DT.28/1/14 STATING 1ST APPLICANT HAS BEEN WORKING AS ATTENDER FROM 14/6/11
- P12: COPY OF THE ORDER DT.5/5/14 APPOINTING THE 1ST APPLICANT AS A SENIOR SUB STAFF
- P13: COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE R3 CORPORATION DATED 4/6/14.
- P14: COPY OF THE MINUTES DATED 30/9/11 PREPARED BY THE COMMITTEE ON BEHALF OF THE R3 (3 PAGES)
- P15: COPY OF LETTER DT.3/6/11 ISSUED BY THE R3 (1 PAGE)

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23711 of 2014

Dated this the 20th day of May, 2015

J U D G M E N T

Aggrieved by the non-regularization of the petitioners engagement, who have been employed on contract basis under the respondent corporation, they have come up before this Court.

2. The petitioners have been employed on contract basis under the respondent corporation from 01.01.2003. They allege that juniors, who are appointed on contract basis and who have put far less service than the petitioners, have been regularized and have been afforded regular pay scale. They further allege that even after many a representations before the 3rd respondent, they have not been regularized. As per notification published on 01.12.2012 in Lakshadweep Times, applications were called for the vacancy of "Deck Crew" on contract basis under the respondent corporation.

Petitioners were taken into the post of Deck Crew (contract basis) and had been working under the 3rd respondent corporation from 01.01.2003 onwards with a consolidated salary of ₹3,000/- per month. After four years, all the works and staff relating to the Fishing Division at Kavaratti were shifted under the CTOD (Control Tower Operation Division), Kavaratti. The petitioners filed Ext.P6 representation for regularization of their service, pointing out that the two cable TV technicians (Cable TV Division and Port Control Tower Division), two management trainees with lesser period of service than the petitioners, who were on contract basis, were regularized and were given regular pay scale. Even though several representations, including Ext.P6, were forwarded to the 4th respondent, no further step was taken by the respondent corporation to regularize the petitioners; it is alleged. It is with this background, the petitioners have come up before this Court.

3. In the counter affidavit filed by the respondents, it was contended that the petitioners are not

selected for appointment as per Ext.P2 minutes of the Interview Board; and in fact, three candidates were selected and the petitioners were included in the panel of 13 candidates for future appointments if necessary. It was further contended that no records of the appointment of the petitioners from 01.01.2003 is available in the office of the LDCL. The petitioners cannot be classified as contract appointees merely because of the fact that the petitioners have paid consolidated wages; according to the respondent corporation. It was further contended that the petitioners are not engaged against any sanctioned vacancy but they were engaged to clear out urgent works or works of non-permanent nature. Therefore, they prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. In the writ petition, the petitioner are seeking a direction to respondents 2 and 4 to regularize the service of the petitioners as Multi Skilled Employees (Attender) forthwith and for a declaration that they are fit to be regularized considering the number of years they have

served under the respondent corporation. It was also prayed not to regularize any contract employees until the petitioners are regularized.

6. The stand taken by the respondents is that the petitioners are working under the LDCL on consolidated wages. The issue is whether they are entitled to get their service regularized. The position is no more res integra. The apex court, in a catena of decisions, has illustrated and clarified the position. The definite stand taken by the respondent is that the petitioner was not engaged in any sanctioned vacancy. The concept of regularization of casual employees took a drastic change with the decision of the apex court in **Secretary, State of Karnataka & Others v. Umadevi (3) & Others** [(2006) 4 SCC 1]. This was subsequently followed by the apex court in a series of decisions. In **State of Rajasthan & Others v. Dayalal & Others** [(2011) 2 SCC 429], the apex court has summarized the settled principles relating to regularization of casual employees as under;

“i. The High Courts, in exercising power under Article

226 of the Constitution will not issue direction for regularization, absorption or permanent continuance, unless the employees claiming the regularization had been appointed in pursuance of a regular recruitment in accordance with the relevant rules in an open competitive process, against sanctioned vacant post. The equality clause contained in Article 14 & 16 should be scrupulously followed and the Courts should not issue directions for regularization of service of an employee which would be violative of the Constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process can be regularized, back door entries, appointments contrary to the Constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

ii. Mere continuation of service by a temporary or ad-hoc or daily wage employee under cover of some interim orders from Court would not confer upon him any right to absorb into service, as such service would be 'litigious employment'. Every temporary, ad-hoc or daily wage service for a long number of years, let alone service for one or two years will not entitle such employee to claim regularization, if he is not working against the sanctioned post. Sympathy & sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

iii. Even where a scheme is formulated for regularization with a cut off date, (ie., a scheme providing that persons who had put in a specified number or years of service and continuing in employment as on the cut off date) it is not possible for others who are appointed subsequent to the cut off date, to claim or content that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off date.

iv. Part time employees are not entitled to seek regularization as they are not working against any sanctioned post. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

v. Part time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the state must arise under a contract or under a statute”.

7. In **Sathyaprakash & Others v. State of Bihar** [(2010) 4 SCC 179], the apex court has made it clear that persons engaged only on daily wages and who were never appointed in any sanctioned post are not entitled to get regularization in their service. Therefore, it is now well settled that persons engaged on daily wage basis not against regular vacancies without a selection process in accordance with the recruitment rules, are not entitled to get the benefit under paragraph 53 of **Umadevi**'s (cited supra) case.

8. The equality clause in Article 16 mandates that every appointment to public post or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit. Therefore, the appointment through side door is constitutionally impermissible. Accordingly, the casual labourers and

temporary employees are not even appointees in the strict sense of the term “appointment” and they do not hold a post.

9. It was pointed out by the learned counsel for the petitioners that certain contract employees and the respondents were regularized earlier. But, the said fact will not confer any right on the petitioners due to the change of law as laid down in Umadevi's (cited supra) case.

Therefore, on a consideration of the entire materials now placed on board, this Court is of the definite view that the petitioners are not entitled to succeed.

In the result, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-