

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2740 OF 2008

- 1) Union of India,
through the Superintendent,
Postal Stores Depot, GPO Annexe,
5th floor, GPO Compound,
At/Post Mumbai.
 - 2) The Assistant Postmaster General
(Recruitment) Office of the
Chief Postmaster General,
Maharashtra Circle, GPO Building
Annex, GPO Compound,
W.H.Road, Fort, Near CST,
Central Railway, At P. O. Mumbai.
 - 3) Chief Postmaster General,
Maharashtra Circle, Old GPO Bldg.
2nd floor, W. H. Road, Fort,
At P.O. Mumbai-1.
 - 4) Secretary, Department of Posts,
Ministry of Communication
and I.T. (DG Post),
Dak Bhavan, Sansad Marg,
At P.O. New Delhi-1.
- ...Petitioners.

vs.

Smt. Shantabai G. Naik,
residing at Rom No.11, Chawl No.56,
Satrasta, Rasool Jiwas Chawl,
Sane Guruji Marg,
Mumbai 400 001.

...Respondent.

WITH
WRIT PETITION NO.2755 OF 2008

- 1) Union of India,
through the Superintendent,
Postal Stores Depot, GPO Annexe,
5th floor, GPO Compound,
At/Post Mumbai.
 - 2) The Assistant Postmaster General
(Recruitment) Office of the
Chief Postmaster General,
Maharashtra Circle, GPO Building
Annex, GPO Compound,
W. H. Road, Fort, Near CST,
Central Railway, At P. O. Mumbai.
 - 3) Chief Postmaster General,
Maharashtra Circle, Old GPO Bldg.
2nd floor, W. H. Road, Fort,
At P.O. Mumbai-1.
 - 4) Secretary, Department of Posts,
Ministry of Communication
and I.T. (DG Post),
Dak Bhavan, Sansad Marg,
At P.O. New Delhi-1.
- ...Petitioners.

Vs.

Smt. Sitabai R.More,
residing at Room No.8, Ambedkar Nagar,
At and Post Kasara,
District Thane.

...Respondent.

Mrs. Neeta Masurkar with Mr. N. R. Prajapati for the petitioners in
both the petitions.

Mrs. Anjali Helekar, Amicus Curiae with Ms. Anu Kaladharan for the Respondents in both the petitions.

CORAM : R.M. BORDE AND

A.S. GADKARI, JJ.

Reserved on : 16th February, 2017.

Pronounced on: 11th April, 2017.

Untitled 1

JUDGMENT: (Per A.S. GADKARI, J.)

1) The petitioners have questioned the correctness of the order passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai dated 31st December 2007 in Original Application Nos. 365 of 2006 and 366 of 2006, allowing the said applications in terms of the directions given by it. The Tribunal has directed the petitioners to give the respondents notional benefits of regular service from the date of their initial appointments till the date of their retirement. It is further directed that the respondents will be entitled to all the actual pensionary benefits and pension from the date the respondents take a final decision to retire the respondents as per the directions given in the said order with other necessary and consequential directions to the petitioners. The Tribunal has also issued consequential directions to the petitioners. The said order is impugned herein.

2) The respondents in W. P. No.2740 of 2008 had filed Original Application No.365 of 2006 and the respondent in Writ Petition No.2755 of 2008 had filed Original Application No.366 of 2006 before the Central Administrative Tribunal, Mumbai Bench, Mumbai against the petitioners herein and had prayed for regularization of their services and consequential benefits thereto. It was the case of the respondents that the respondent in Writ Petition No.2740 of 2008, Smt. Shantabai G. Naik was working as sweeper with effect from 1.6.1974 and the respondent in Writ Petition No.2755 of 2008 was working as sweeper since 1984 in the Postal Stores Department, Thane, District Thane. That, they were performing the work of sweeping the petitioners' premises at two places and were also filling up storage vessels, pot with drinking water, in the morning from 9.30a.m. to 1.00 p.m. and then again from 3.00 p.m.to 6.00 p.m. That, they were performing their duties every day for more than 6 to 7 hours and in addition, it used to take them two to three hours to commute from their residence to office and back. It was the further case of the respondents that they were working as sweepers and cleaning the toilets of the premises of the petitioners in addition to cleaning the floor and filling water

vessels as there was no regular Class IV employee appointed by the petitioners for the said job. It was the further case of the respondents that the said working system was continued without any interim directions either from the Tribunal or any other Court. The respondent Shantabai G. Naik was about 66 years of age and the respondent Smt. Sitabai R. More was more than 61 years of age on the date of filing of the said original applications and though they had reached the age of superannuation, they used to perform their duty continuously. That the work and the conduct of the respondents had all along been satisfactory and they never gave chance to complaint to the petitioners while performing their duties and it is only because of their sincere performance of duty they were continued on the said job/duty for at least 20 to 30 years. It was their further case that despite having worked which was of permanent and regular in nature, the petitioners did not take any steps to regularise the respondents. It was also the contention of the respondents that the petitioners were not in a position to appoint alternate sweepers to do the kind of job, the respondents were entrusted with for more than two decades. It was thus contended that the services of the respondents were indispensable for the

petitioners.

The record reveals that after notice, the petitioners appeared in the said original applications and opposed to grant of reliefs by filing their written statement. It was stated that, in the absence of vacancies or available posts, services of the respondents could not be regularized. It was also stated that maximum age limit prescribed by the Government for Group D employees is 60 years vide G.I. Department of Posts, dated 23.2.1993 and on that count the case of the respondents cannot be considered for regularization of any post of the respondents.

The Tribunal after hearing the parties to the said original applications, was pleased to allow the same by the impugned order as stated herein above.

3) Heard the learned counsel Mrs. Masurkar for the petitioners, Mrs. Helekar, the learned Amicus Curiae and also perused the entire record annexed to the petitions.

4) The learned counsel appearing for the petitioners, submitted that the Tribunal ought not have granted reliefs in favour of the respondents and ought to have dismissed the applications filed by them. She submitted that the respondents were working as

casual labourers purely on temporary basis and their services cannot be regularized and therefore the respondents cannot have legitimate expectation of regularization and pensionary benefits of service. She submitted that the scheme prepared by the petitioners' department called "Casual Labourers (Grant of Temporary Status and Regularization) dated 12.4.1991 covers only full time casual labourers and the same scheme is not applicable to the part time casual labourers as has been held by the Apex Court. She submitted that the order dated 20.4.1990 passed by the Tribunal in the case of Vilas Joshi and others in Original Application No.668 of 1998 has been set aside by the Apex Court. She further submitted that the respondents were engaged only on casual basis and therefore, they cannot claim regularization. She lastly submitted that the Tribunal has erred in allowing the original applications by ignoring the principles laid down by the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and ors. vs. Umadevi and ors reported in AIR 2006 SC 1806*. She therefore, prayed that the impugned order dated 31.12.2007 passed by the Tribunal may be quashed and set aside and the present petitions may be allowed.

5) Mrs. Helekar the learned Amicus Curiae appointed for

the respondents opposed the petitions and submitted that the respondents were performing the duty of sweeper with the establishment of the petitioners for more than two decades. That, the respondents were also asked to clean the toilets and to fill up storage vessels, pots with drinking water, apart from sweeping the respondent's premises at two places. She submitted that the respondents used to work for more than 8-hours per day. She further submitted that the petitioners being the "State" and Model Employer cannot exploit the respondents by denying their legitimate right. She submitted that the act of the petitioners is contrary to the principles enunciated in Articles 23, 38 and 43 of the Constitution of India. She further submitted that the applicants have attained the age of superannuation and therefore, the directions issued by the Tribunal to give them all the actual pensionry benefits and pension from the date when the petitioners take the final decision of retirement need not be interfered with and or altered by this Court in the interest of justice. She therefore, prayed that the present petitions may be dismissed.

6) The record reveals that the respondents along with Shri. S.V. Vanjare and others had preferred Original Application No.786 of

1993 before the Central Administrative Tribunal, Bombay Bench, for regularization of their services. That the Tribunal had allowed the said application and had directed that the services of the respondents should be regularized. The Union of India preferred SLP(Civil) No.16063 of 1995 in the Hon'ble Supreme Court of India and the Supreme Court by its order dated 30.8.1996 set aside the order passed by the Tribunal. The order dated 30.8.1996 is reproduced herein below for the sake brevity:-

“Leave granted.

This appeal has been filed on behalf of the Union of India against an order passed by the Central Administrative Tribunal directing that service of the respondents who were the petitioners before the Tribunal should be regularized. This aspect has been considered by Court in the case of *State of Haryana and ors Vs. Piara Singh and ors reported in 1992 (4) SCC 116*. Accordingly this appeal is allowed. The impugned order is set aside. We direct the appellants to consider the case of the respondents in the light of the aforesaid Judgment of this Court in *State of*

Haryana vs. Piara Singh (supra). No costs.”

7) The Supreme Court in the case of *State of Haryana and others vs. Piara Singh and others reported in (1992) 4 SCC 118* in Para Nos. 21,45 and 51 has held as under.

“21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, Of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure that rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the

requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason, it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions, of which it would be sufficient to mention two decisions having a

bearing upon the issue involved here. They are *Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka and Jacob M. Puthuparambil vs. Kerala Water Authority*. In the first case, it was alleged that about 50,000 persons were being employed on daily rates or on monthly-rated basis over a period of 15 to 20 years, without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment. In that view of the matter, following directions were given, after reviewing the earlier decisions of this Court elaborately: (SCC Page 408, Para 23)

2. From amongst the casual and daily rated employees who have completed ten years of service by December 31, 1989, 18,600 shall immediately be regularized with effect from January 1,1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity

shall mainly be the test of suitability.

3. The remaining monthly rated employees, covered by the Paragraph 1 who have completed ten years of service as on December 31, 1989 shall be regularized before December 31,1990, in a based manner on the basis of seniority-cum-suitability, suitability being understood in the same way as above.

4. The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 21,1997.

5. At the point of regularisation, credit shall be given for every unit of five years of service in excess of 10 years and one additional increment in the time scale of pay shall be allowed by way of weightage.

There was a direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart

from these reliefs no other would be admissible.”

45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad-hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc /temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to

availability of work. If a casual labourer is continue for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job.

8) The Supreme Court in the case of *Secretary, State of Karnataka and ors. vs. Umadevi and ors. reported in AIR 2006 SC 1806* in Para 44 has held as under:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa (supra)*, *R. N. Nanjundappa (supra)* and *B.N. Nagrajan (supra)*, and referred to in paragraph 15 above, of duly qualified persons in

duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders, of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if

any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

9) The record further reveals that in the case of *Secretary, Ministry of Communication and ors. Vs. Sakkubai and another reported in 1998 (1) ATJ 556*, The Supreme Court had considered two schemes/notifications dated 17.5.1989 and 12.4.1991 for the purpose of conferment of temporary status/regularization to various casual labourers, including part time casual labourers.

On perusal of the said Judgment it, would indicate that even the part time casual labourers were to be absorbed in service in accordance with priorities set out in the letter dated 17.5.1989 provided they fulfill the eligibility criteria. In Para 8 of the said Judgment, the Supreme Court has enunciated the said priorities which are as under:

“8. The letter also gives priorities which are to be observed in recruitment to Group D Officials.

- (i) NTC Group D Officials.
- (ii) EDAs of the same Division.
- (iii) Casual Labourers (full) time or part-time. For purpose of computation of eligible service, half of the service rendered as part time casual labourer should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years, he will be treated, for purposes of recruitment to have completed one year of service as full time casual labourer)
- (iv) EDAs (of other divisions in the same region).
- (v) Substitutes (not working in metro-politan cities).
- (vi) Direct recruits through employment exchanges.”

Thus, the aforestated enunciation made by the Supreme Court and in particular clause (iii) would clearly indicate that the casual labourer does includes part time casual labourers also.

10) As stated earlier the respondents were working in the petitioners' establishment for more than two decades. They were

toiling hard to earn their livelihood and it is stated that the respondents were casual labourers appointed on temporary basis. The record is silent about the same and the contention and the pleadings of the respondents that they used to work for more than 8-hours every day by doing all type of work of Class IV/Category D employees was required to do. It further clearly appears from the record that the petitioners had also issued a letter dated 3.2.1997 along with annexures which contains the names of 27 casual labourers including the respondents. The names of the respondents are reflected at Sr. No.1 and 4 and the said seniority list is in respect of regularization of their services. As stated earlier, the record and the pleadings of the present case clearly indicates that the respondents were working on the establishment of the petitioners for at least six hours per day for more than two decades. They were made to work in two establishments simultaneously and therefore, the designation of the respondents as part timers is a misnomer. We are of the clear opinion that the services of the respondents were required by the petitioners since morning to late in the evening which fact is established from the record. The respondents were performing the task of sweeper. They used to clean toilets and other

ancillary and miscellaneous work for more than two decades to the entire satisfaction of the petitioners. It is a matter of fact that work performed by the petitioners was of perennial nature and continued even if their attaining the age of superannuation continuously without any brake or hindrance and or any interim directions from the Tribunal or any other Court. According to us, indubitably the services of the respondents were indispensable for the petitioners.

11) In view of the above, we are of the considered view that there is no perversity or any irregularity apparent in the impugned order dated 31.12.2007 passed by the Tribunal. The petitions are devoid of any merits and are dismissed accordingly with no order as to costs.

12) The respondents are hereby directed to comply with the directions issued by the Tribunal with respect to their actual pensionary benefits and pension within a period of three months from today.

(A.S.GADKARI, J.)

(R.M.BORDE, J.)