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

*Reserved: 30<sup>th</sup> October, 2018*

*Pronounced on: 13<sup>th</sup> November, 2018*

+ W.P.(C) 8181/2017

DHARMENDER KUMAR AND ORS ..... Petitioners

Through : Mr. M.K. Bhargdwaj, Advocate.

Versus

AGRICULTURAL & PROCESSED FOOD DEVELOPMENT  
AUTHORITY AND ANR ..... Respondents

Through : Ms. Jyoti Srivastava, Standing Counsel.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

### **J U D G M E N T**

1. Vide the present petition, the petitioners seek direction thereby declaring the action of respondents in outsourcing the post of Peons/ MTS as illegal and direct the respondents to regularize the services of Petitioners as peon/ MTS in the same manner in which other similarly placed contractual employees have been regularized. Further seeks direction thereby set aside thereby quashing the impugned action of respondents including letter dated 08.06.2017. Consequently, the respondents may be directed to treat the services of Petitioners as regular from the date of appointment and release whole consequential benefits.

2. Brief facts of this case are that, the Petitioners were appointed through open selection as Peon against sanctioned post and continuing in the same capacity for the last 16-20 years, however, till date the services of the petitioners have not been regularized.

3. Learned counsel appearing on behalf of the petitioners submits that in similar circumstances, in order to give relief to contractual staff working for years together, many states including Jammu & Kashmir and Himachal Pradesh formulated policy vide notification dated 29.04.2010 and 17.08.2012 for regularization of contractual staff. Even the respondents have also regularized the services of similarly placed persons as mentioned above, whereas contrary stand has been taken in case of Petitioners. Thus, the said action of the respondents is not only arbitrary and illegal but also contrary to the doctrine of legitimate expectation.

4. Counsel appearing on behalf of the petitioners has drawn the attention of the Court to Annexure P-10 dated 31.05.2016 issued by respondents to the direction (EP Agri), Ministry of Commerce and Industry, Department of Commerce, Udyog Bhawan, New Delhi, whereby stated as under:-

*“4. A meeting of Departmental Promotion Committee held on 11.05.2016 considered the proposal and recommended that a comprehensive proposal may be sent to the Department of Commerce for one time regularization of contractual employees engaged as Personal Executives and Jr. Assistant Executives against the vacancies subject to selection based on the educational qualification as prescribed in APEDA Recruitment Rules, as mentioned in the DoC letter No. 1/3/2009-EP (Agri IV) dated 4<sup>th</sup> February 2016 (copy enclosed) and the remaining vacant posts may be filled by Direct Recruitment.*

*1. The committee also observed that since the vacant Group ‘D’ posts have not been revived, the contractual employees against Group ‘D’ posts may continue under the existing arrangement.*

*2. A proposal has been accordingly formulated and the same is Enclosed with a request to convey the approval of the Govt. of India for regularization of 4 contractual employees as Personal Executives and 12 contractual employees as Jr. Assistant Executives at the earliest. This will be a one time exercise and there will be no further appointment on contractual basis.”*

5. Counsel appearing on behalf of the petitioners submits that the petitioners are working from the last 15 to 20 years and pursuant to communication dated 31.05.2016, the petitioners have not been regularized whereas the other Group-D employees have been regularized.

6. Learned counsel submits that similar issue came before this Court in W.P.(C) 7808/2012, and same was disposed of vide order dated 11.11.2014 whereby held as under:-

*“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."*

7. Thus, learned counsel further submits that the case of the petitioners are fully covered by the judgment of ***Ritu Kushwaha and Ors. Vs. Union of India and Ors.***, therefore the present petition deserves to be allowed.

8. On the other hand, learned counsel appearing on behalf of the respondents argued that the petitioners have invoked the present writ jurisdiction of this Court as they are well aware of the fact mentioned in office memorandum dated 30.04.2010 issued by the Ministry of Personnel, Public Grievances and Pensions therein that 6<sup>th</sup> pay Commission recommended abolishment of the all Group D Post in the Government and will stand upgraded to Group C, Pay band 1 with grade pay of Rs. 1800/-, along with the incumbents (after suitable training wherever required). The other recommendations including that there were no further recruitments in Group-D, the existing Group D post will be placed in Group –C, Band-1 as mentioned above and the minimum qualifications will be either 10<sup>th</sup> Pass or ITI equivalent. Moreover, in view of the case of ***Uma Devi Vs. State of Karnataka***, the petitioners are not entitled for any regularization. Thus, the present petition deserves to be dismissed.

9. The fact remains that in counter affidavit filed by the respondent, it is stated that the respondents due to inadvertent and oversight of the above directions framed, 2011 regulations including Group-D, however, no post of Group-D, Post Umadevi's case was ever advertised by the Respondents. Thus, the post stands abolished and is beyond the scope of revival. It is further stated that since 2006 till date, no post was advertised to seek recruitment of any eligible person on Group-D post. Moreover, in the year 2010, the circular was passed by the Ministry of Personal, Public

Grievances, Pensions which abolished the Group D post and the same was upgraded as Group C post MTS. However, due to oversight the circular requiring changes to be done was not included in amendment regulations 2011 issued. The relief given to existing Group D permanent employees was as per circular of the Ministry.

10. In case ***Ritu Kushwaha*** (supra), the petitioners therein rendered more than ten years of casual service and this Court has held that they are entitled to be considered for regularization in terms of directions issued by the Supreme Court in ***Uma Devi*** (supra) under a scheme, to be framed by the respondents. It is further held that there can be no doubt that but for the fact that the 6<sup>th</sup> 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 therein was that on account of abolition of Group-D posts and their conversion/merger to Group-D posts of MTS which are required to be filled through the SSC upon fulfilment of the eligibility norms, the case of the petitioners for regularization cannot be considered.

11. However, the same plea has been taken by the respondents in the case in hand whereas by considering the rival contention of the parties in ***Ritu Kushwaha*** (supra), the Supreme Court finally has held that the respondents therein cannot discriminate and treat the petitioner therein differently. Consequently directing the respondents therein to 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 ***Uma Devi*** (supra).

12. Moreover, in case of Amarendra Kumar Mohapatra Vs. State of

Orissa and Ors., (2014) 4 SCC 583 whereby the Hon'ble Supreme Court held as under:-

*“43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in [State of Karnataka v. M.L. Kesari and Ors.](#) (2010) 9 SCC 247, has examined that question and explained the principle regarding regularisation as enunciated in Umadevi's case (supra). The decision in that case summed up the following three essentials for regularisation (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage:*

*“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi, if the following conditions are fulfilled:*

*(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.*

*(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person*

*employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”*

*44. It is nobody's case that the degree holder Junior Engineers were not qualified for appointment as Assistant Engineers as even they possess degrees from recognised institutions. It is also nobody's case that they were not appointed against the sanctioned post. There was some debate as to the actual number of vacancies available from time to time but we have no hesitation in holding that the appointments made were at all relevant points of time against sanctioned posts. The information provided by Mr. Nageshwar Rao, learned Additional Solicitor General, appearing for the State of Orissa, in fact, suggests that the number of vacancies was at all points of time more than the number of appointments made on ad hoc basis. It is also clear that each one of the degree holders has worked for more than 10 years ever since his appointment as ad hoc Assistant Engineer. It is in that view difficult to describe these appointments of the Stipendiary Engineers on ad hoc basis to be illegal so as to fall beyond the purview of the scheme envisaged in Umadevi's case (supra).*

*76. The ratio of the decision in the above case was not faulted by the Constitution Bench of this Court in Direct Recruit's case (supra). As a matter of fact the Court approved the said decision holding that there was force in the view taken by this Court in that case. This Court observed: (SCC p. 726, para 13)*

*“13. ... In [Narender Chadha v. Union of India](#) the officers were promoted although without following the procedure prescribed under the rules, but they*

*continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.”*

*78. Having said so, there is no reason why a similar direction regarding the writ-petitioners degree holder Junior Engineers who have been held by us to be entitled to regularisation on account of their length of service should also not be given a similar benefit. We must mention to the credit of Dr. Dhawan, appearing for the Stipendiary Engineers who have been regularised under the provisions of the Legislation that such Stipendiary- ad hoc Assistant Engineers cannot, according to the learned counsel, have any objection to the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis being regularised in service or being given seniority from the date they were first appointed. It was also conceded that Stipendiary Engineers all of whom were appointed after the appointment of the Junior Engineers would en bloc rank junior to such ad hoc Assistant Engineers from out of degree holder Junior Engineers. But all such regularised Assistant Engineers from Stipendiary Stream and from Junior Engineers category would together rank below the promotee Assistant Engineers.*

13. Since the petitioners have completed 15 to 20 years in service and in view of the above discussion and the legal position, the petitioners are

entitled to be regularized in the services. Consequently, the respondents are directed to regularize the petitioners as peon/ MTS, within 8 weeks from the receipt of this order, in the same manner in which others similarly contractual employees have been regularized with all consequential benefits granted to them. Consequently, the letter dated 08.06.2017 is here by quashed.

14. Accordingly, the petition is allowed with no order as to cost.

**CM APPL. No. 33605/2018**

15. In view of the order passed in the present writ petition, this application has been rendered infructuous and are accordingly, disposed of such.

**(SURESH KUMAR KAIT)  
JUDGE**

**NOVEMBER 13, 2018**  
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