



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

% *Date of decision: August 8, 2023*

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+ W.P.(C) 6822/2018 & CM APPL. 25942/2018

ANITA AND ORS

..... Petitioners

Through: Mr. Mohd. Anas, Adv. for petitioner
nos. 1, 3 and 4.
Mr. Uddian Sharma, Mr. Jaitegan
Singh Khurana, Ms. Arzoo Aneja and
Ms. Vanshita Gupta, Advs. for
petitioner No.2

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rakesh Kumar, CGSC with
Mr. Sunil, Adv. with Mr. Ravi
Kumar, JE

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioners with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ or direction thereby:

a) setting aside and quashing the impugned order dated 17.04.2018 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2211/2015 titled as Smt. Anita & Ors. Versus Union of India & Ors.', and



b) directing the respondents to reinstate the petitioners to their posts held by them prior to their illegal termination on 27.04.2018 and further to regularize the services of all the petitioners in their respective posts, from the date of their initial appointments with all the consequential benefits, in the interest of justice.

c) issue the writ of mandamus or any other appropriate writ or direction or order, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the favour of the petitioners and against the respondents.”

2. In effect, the petitioners are challenging the order dated April 17, 2018 passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.2211/2015 ('OA', for short) whereby the Tribunal has dismissed the OA filed by the petitioners herein by stating in paragraphs 14 and 15 as under:

“14. In the present case, I find that these applicants have not been engaged against regular vacancies. Applicant Nos. 1, 2 & 3 have been engaged as Safaiwalis for just 4 hours per day, whereas applicant Nos. 4 & 5 have been engaged for similar duration as Mali/Khallasi. Their engagement cannot be called as a „full time engagement“. They have also not completed 240 days of full work in a year. Hence, I am of the view that these applicants are not eligible for grant of the benefits of the dictum in Umadevi's case (supra). The judgments relied upon by the applicants do not apply to the instant case on the issue of facts. As noted hereinabove, one of the prime conditions for regularization is that the irregular appointments should have been made against sanctioned posts. The applicants have failed to adduce any material to



indicate that their engagement had been against regular posts.

15. In the conspectus of discussions in the preceding paragraphs, I do not find any merit in this O.A. The O.A., being bereft of merit, is accordingly dismissed without any order as to costs.”

3. Suffice to state, the petitioner Nos.1, 2 & 3 were appointed as Safaiwali in the years 1993, 1998 and 1999 respectively, whereas the petitioner Nos.4 & 5 were appointed as Mali and Khallasi in the years 2000 and 2004 respectively in Central Water Commission (CWC), on *ad-hoc* basis and they were to be paid lump sum monthly emoluments. The claim of the petitioners before the Tribunal was that their services be regularized in terms of the DoP&T OM dated December 11, 2006 issued in compliance of the directions of the Supreme Court in the case of ***Secretary, State of Karnataka & Others v. Umadevi & Others, (2006) 4 SCC 1*** and ***State of Karnataka & Others v. M. L. Kesari & Others, (2010) 9 SCC 247***, and on the basis of the judgment of a Single Judge of this Court in the case of ***Rajender Singh v. Union of India, W.P.(C) 8200/2011*** decided on December 11, 2014.

4. It is their case that they have been praying for regularization in service and have submitted their individual representations but no action has been taken on such representations by the respondents. The Tribunal has rejected the OA by stating as under:

“11. The applicants are seeking their regularization in service in accordance with the dictum of Hon’ble Apex Court in Umadevi’s case (supra). For better



appreciation, the relevant portion from Umadevi's case is extracted below:-

“44. 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. NAGARAJAN (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 subjudice, 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.



12. It is quite clear from Umadevi's case that casual workers are eligible for regularization if they have rendered more than 10 years of service and have been engaged against regular posts. The DoPT O.M. dated 11.12.2006 issued on the basis of the said judgment, inter alia, states as under:-

“The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No. 49014/2/86 Estt.(C) dated 7th June, 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post can not be created. Attention is also invited to this Department's OM No. 28036/1/2001-Estt. (D) dated 23 rd July, 2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market.

2. A Constitution bench of the Supreme Court in civil appeal No. 3595-3612/1999 etc. in the case of Secretary State of Karnataka and Ors. Vs. Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgement dated 10.4.2006 has directed that 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 are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not



under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

3. Accordingly the copy of the above judgement is forwarded to all Ministries/Departments for implementation of the aforesaid direction of the Supreme Court.”

13. The Hon“ble Supreme Court in Prem Ram’s case (supra) was dealing with the case of petitioner therein, who was employed as casual worker in Uttrakhand Pey Jal Nigam but his services were terminated. The said termination was held illegal by the Labour Court, as a result of which he was ordered to be placed back in service. In the interregnum, some casual workers, appointed later than the petitioner, were regularized in terms of the ratio of law laid down in Umadevi’s case. The petitioner therein was seeking his regularization, which was not considered by the respondents, whereas some daily wagers, who were junior to him, were regularized. The respondents had tried to say that the petitioner therein was employed on daily wage basis, whereas his juniors, who were regularized, were engaged temporarily on work charged establishment. The Hon“ble Apex Court, however, demolished this logic of the respondents therein and said that there is no perceptible difference between a daily wage employee and a work charged employee. Accordingly, the Hon“ble Court ordered for regularization of the petitioner on the principle of parity.

14. In the present case, I find that these applicants have not been engaged against regular vacancies. Applicant Nos. 1, 2 & 3 have been engaged as Safaiwalis for just 4 hours per day, whereas applicant Nos. 4 & 5 have been engaged for similar duration as Mali/Khallasi. Their engagement cannot be called as a „full time



engagement". They have also not completed 240 days of full work in a year. Hence, I am of the view that these applicants are not eligible for grant of the benefits of the dictum in Umadevi's case (supra). The judgments relied upon by the applicants do not apply to the instant case on the issue of facts. As noted hereinabove, one of the prime conditions for regularization is that the irregular appointments should have been made against sanctioned posts. The applicants have failed to adduce any material to indicate that their engagement had been against regular posts.

15. In the conspectus of discussions in the preceding paragraphs, I do not find any merit in this O.A. The O.A., being bereft of merit, is accordingly dismissed without any order as to costs."

5. The submissions of the learned counsel for the petitioners are almost identical to the pleas advanced before the Tribunal. At the outset, they submit that the engagement of the petitioners as Safaiwali, Mali and Khallasi was dispensed with immediately after the pronouncement of the judgment of the Tribunal. They submit, that this would not preclude this Court from considering the plea of regularization since the petitioners have put in long years of service with the respondents.

6. They also state that the petitioners in this petition have also sought a prayer for their reinstatement as held by them prior to April 27, 2018. In support of prayer for regularization, learned counsel would submit that the petitioners have been working for a long time. It is clear that the work which they were doing is perennial in nature and for which, surely the posts exist. They also



submit that in view of the judgment of the Supreme Court in the case of ***Umadevi & Others (supra)***, the petitioners having rendered more than ten years of service, are entitled to regularization. They submit that even if it is the plea of the respondents that the petitioners were engaged on part time basis, that would not preclude the respondents to regularize the services of the petitioners. In fact, they have placed reliance on the judgment of the Supreme Court in the case of ***Prem Ram v. Managing Director, Uttarakhand Pwya Jal & Nirman Nigam Dehradun & Others, Civil Appeal No.4474/2015*** decided on May 15, 2015 to contend that the Supreme Court ordered for regularization of the petitioner therein, who was engaged on daily wages.

7. They also submit that the Supreme Court in the case of ***Malathi Das (retired) now P.B. Mahishy & Others v. Suresh & Others, (2014) 13 SCC 249*** had also directed for regularization of the services of the persons in the petition. In fact, reliance is heavily placed on the instructions issued by DoP&T dated December 11, 2006, to contend that the engagement of the petitioners being not illegal, are entitled to regularization and same are reproduced as under:

“The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No. 49014/2/86 Estt.(C) dated 7th June, 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work



which is not of full time nature for which regular post can not be created. Attention is also invited to this Department's OM No. 28036/1/2001-Estt. (D) dated 23rd July, 2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market.

2. A Constitution bench of the Supreme Court in civil appeal No. 3595-3612/1999 etc. in the case of Secretary State of Karnataka and Ors. Vs. Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgement dated 10.4.2006 has directed that 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 are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

3. Accordingly the copy of the above judgement is forwarded to all Ministries/Departments for implementation of the aforesaid direction of the Supreme Court.”

8. They submit that the persons junior to the petitioners, who were also part time employees, have been regularized by the department but the said benefit has been denied to the petitioners for arbitrary reasons. Further, the petitioners have unblemished service record and there were no complaint / warning ever issued to them during their entire service. The assertion of the respondents



that the petitioners never performed their duties properly is not correct as no written direction / warning was issued to them for improvement. Even otherwise, it is not the case that they have failed to improve their performance. The plea is an afterthought. It is contended that if there was anything adverse against the petitioners, their engagement would have been terminated long back but it was only terminated because of the dismissal of the OA. Even the termination of the petitioners is challenged as bad in law since no show cause notice was issued to the petitioners at any point of time. Accordingly, the prayers as made in the writ petition, are pressed.

9. On the other hand, learned counsel for the respondents would submit that the petitioners were not casual employees but working on contract basis as part time workers. The petitioner Nos.1 to 3 were engaged for sweeping and cleaning the office premises. The petitioner No.4 was engaged as grass cutter (Mali) and the petitioner No.5 was engaged for dusting the office furniture, doors and windows in the office of the Superintending Engineer, Planning Circle, CWC, Faridabad. All the petitioners were engaged purely on part time basis for 4 hours per day as and when their services are required by the Department.

10. As per the record, there was no sanctioned post of part-time Safai Karamchari either in CWC Faridabad nor in the Delhi office at that time and also as on date. During the pendency of the OA, on April 03, 2018 it was decided to outsource the services of



sweeper, gardener and housekeeping in CWC office at Faridabad and the entire work has been outsourced.

11. According to learned counsel for the respondents, the parity sought to be claimed by the petitioners *qua* Raghav Kumar Jha and Chaman Lal, is misplaced as they were engaged on full-time basis. The department also utilized their services for a period of ten years against sanction strength of the post of Khalasi (now skilled work assistant). The CWC brought out the scheme for grant of temporary status and regularization of seasonal Khalasi in the work charged establishment of CWC and pursuant to the said scheme a decision was taken for filling up vacant post of work charged Khalasi in CWC.

Pursuant thereto, Raghav Kumar Jha and Chaman Lal have been appointed as Khalasi on regular basis vide office order dated December 20, 2013 in terms of the meeting held under the Chairmanship of Superintending Engineer, whereas the petitioners, were engaged for 2-4 hours duration on part time basis and had never been appointed for 8 hours a day, i.e., full time basis. According to respondents, this being the distinguishing feature, the petitioners cannot seek parity *qua* the above two persons.

12. Even otherwise, it is his submission that the law in that regard is well settled in terms of the judgment of the Supreme Court in the case of *Umadevi & Others (supra)*. He has also relied upon the judgment in the case of *State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another v. A. Singamuthu, (2017) 4*



SCC 113. Reliance is also placed upon *Secretary to Government, School Education Department, Chennai v. Govindaswamy and Others, (2014) 4 SCC 769* and *State of Rajasthan & Ors. v. Daya Lal & Ors., (2011) 2 SCC 429*.

13. We have already reproduced the relevant findings of the Tribunal in the above paragraphs. The plea that is now being urged by the learned counsel for the petitioners is with regard to regularization of their services after reinstating them. There is no dispute that after the dismissal of the OA, the respondents have disengaged the petitioners. So in that sense, the petitioners are not working with the respondents any more. The year of engagement of the petitioners is not in dispute. It is true when they filed OA in the year 2015, one of the petitioners had almost put in 22 years of engagement. Similarly, the petitioner No.2 has put in 17 years and petitioner No.3 has put in 16 years whereas the respondent Nos.4 and 5 have put in 15 and 11 years of engagement for doing various duties like the Safaiwali, Mali and Khallasi.

14. Heavy reliance has been placed by the learned counsel for the petitioners on the judgment of the Supreme Court in the case of *Umadevi & Others (supra)* more specifically that the petitioners having been put in more than ten years of engagement in terms of paragraph 53 of the judgment they are entitled to regularization. In the said judgment, the Supreme Court has drawn distinction between an irregular / illegal appointment.



15. The plea of the respondents before the Tribunal was that the petitioners were engaged as part time workers for 2-4 hours and their engagement was as and when work is available. But the fact remains, and it is not the case of the respondents, that they were disengaged even for a single day from the date of their engagement.

16. The plea of the respondents is that the petitioners have been engaged as part time workers, and not against any sanctioned post. It is also their case that after disengagement of the petitioners, they have outsourced the work which was being done by the petitioners to an outside agency. In that sense, it is urged by the learned counsel for the respondents that the reinstatement / regularization of the petitioners cannot be permitted. This plea of the learned counsel for the respondents is appealing. The respondents having outsourced the work, surely there is no work to be done by the petitioners herein as regular employees of the respondents. The issue is also whether a direction can be issued for regularization of the petitioners. On a specific query to the learned counsel for the petitioners on the education qualification possessed by the petitioners, the answer is they are illiterate.

17. It is a matter of record, that there is a minimum requirement for filling even the post of Multi Tasking Staff (MTS), in the Central Government for doing the work as was being performed by the petitioners herein, which is at least a person must be 8th / 10th pass. So, it follows that the petitioners do not possess



the required qualification for even being appointed MTS. So, no direction for regular appointment can be given, as it goes without saying for regular appointment a person must possess the minimum qualification required as per the recruitment rules.

18. Learned counsel for petitioners submit that certain benefits and opportunities must be afforded to workers who have put in over ten years of service. Reliance is further placed upon the following judgments:

1. *University of Delhi v. Delhi University Contract Employees Union, 2021, SCC OnLine SC 256;*
2. *Union of India v. Ganga Ram, 2012 SCC OnLine P&H 19819;*
3. *State of J&K v. Distt. Bar Assn., Bandipora, (2017) 3 SCC 41;*
4. *Amarendra Kumar Mohapatra v. State of Orissa, (2014) 4 SCC 583;*
5. *Sachiv Krishi Upaj Mandi Samiti v. Mahendra Kumar, 2003 SCC OnLine MP 720;*
6. *M. Padmavathy v. Government of Tamil Nadu, 2013 SCC OnLine Mad 4077;*
7. *Randhir Singh v. Union of India, (1982) 1 SCC 618;*
8. *Prajantra Prachar Samity v. Cuttack Press Workers Union, 2012 SCC OnLine Ori 219;*
9. *Kanhaiyalal Shyamlal Dhawade v. State of Maharashtra, 2019 SCC OnLine Bom 2694;*



10. *ONGC v. ONGC Contractual Workers Union, (2008) 12 SCC 275*; and
11. *Hindustan Petroleum Corporation Ltd. v. The Presiding Officer, Central Government Labour Court cum Industrial Tribunal, 2008 (4) CTC 819.*

19. No doubt, the petitioners were engaged for a long period of time, however, keeping in view the position of law as held by the Supreme Court in *Umadevi & Others (supra)*, and the fact, that the petitioners do not possess the required qualifications for regular appointment, we are afraid that the prayer as made by the petitioners in this petition cannot be granted. The said judgments have no applicability to the facts of this case.

20. In view of our discussion above, we are the view that the present petition and connected application need to be dismissed. It is ordered accordingly. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

AUGUST 08, 2023/aky