

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

M.A.Nos. 407 of 2021 in O.A No. 180/00176/2019
&
M.A.Nos. 406 of 2021 in O.A No. 180/00177/2019

Tuesday, this the 22nd day of November, 2022

CORAM:

HON'BLE Mr. JUSTICE K.HARIPAL, JUDICIAL MEMBER

HON'BLE Mr. K.V.EAPEN, ADMINISTRATIVE MEMBER

M.A.Nos. 407 of 2021 in O.A No. 180/00176/2019

Padmini T.K.

- M.A.Applicant

[By Advocate : Sri.Ravi K Pariyarath]

Versus

Union of India and Ors.

- M.A.Respondents

[By Advocate : Mrs.O.M.Shalina, SCGSC]

M.A.Nos. 406 of 2021 in O.A No. 180/00177/2019

P.U.Mallika

- M.A.Applicant

[By Advocate : Sri.Ravi K Pariyarath]

Versus

Union of India and Ors.

- M.A.Respondents

[By Advocate : Mr.M.K.Padmanabhan Nair, ACGSC]

The applications having been heard on 18.11.2022, the Tribunal on 22.11.2022 passed the following:

ORDER

Justice K.Haripal

Since common questions are involved, both these applications were heard together and are being disposed of by this common order.

2. Earlier, both O.A.s 176 and 177 of 2019 were disposed of by the Tribunal by the common order dated 09.09.2020 directing the respondents to take immediate necessary steps to re-examine the matter of regularisation of the service of the applicants in the light of the circumstances indicated in their letter dated 08.05.2019 and the exercise was directed to be completed within a period of three months from the date of receipt of a copy of the order. Later, on application moved by the respondents the time limit was extended by two months. Thereafter, the applicants filed these Miscellaneous Application Nos.406 and 407 of 2021 seeking to direct the respondents to implement the direction in the said order dated 09.09.2020 in its letter and spirit forthwith, in the interest of justice. The respondents then moved this Tribunal along with copy of the order dated 30.07.2021 of the Joint Commissioner of Central Board of Indirect Taxes and Customs stating that they have complied with the said direction and sought to close the M.A.s. It was informed therein that the

requests for regularisation stand rejected. Thus the question was considered again by the Tribunal. In the backdrop of the order of the Joint Commissioner, after hearing the parties again, by order dated 12.10.2021 it was noticed that the order of the Joint Commissioner did not meet the directions dated 09.09.2020. In that view, the compliance report was not accepted and the 2nd respondent was directed to re-examine the matter of regularisation and to file a fresh compliance report, within three months. It was also observed that the M.A.s filed by the applicants will remain open. Now fresh compliance reports have been filed.

3. We heard the learned counsel for the applicants Sri.Ravi K. Pariyarath, the learned Senior Central Government Standing Counsel, Smt.O.M.Shalina and the learned Central Government Standing Counsel, Sri.M.K.Padmanabhan Nair. Learned counsel for the applicants, referring to the report dated 16.11.2022 has submitted that the respondents have not taken earnest steps for implementing the directions of this Tribunal. He invited our pointed attention to the note of the Department of Personnel and Training dated 01.06.2022, where it is stated that there is no provision in the scheme of 1993 for retrospective regularisation, that the Administrative Ministry has not furnished the details of availability of

vacancies indicating the number of such casual labourers, out of 133, who were eligible for regularisation of their services before superannuation/death as per the scheme of 1993. According to him, this does indicate that the Administrative Ministry has not brought out precise reasons for not regularising the services of those casual labourers in the vacancies existed before superannuation/death. In the light of want of particulars, the Department of Personnel and Training did not concur with the proposal of the Administrative Ministry for the regularisation of services of casual labourers. In this connection, the learned counsel also relied on the decisions reported in *State of Karnataka and others v. M.L.Kesari and others [AIR 2020 SC 2587]* and *Sheo Narain Nagar and others v. State of Uttar Pradesh and others [AIR 2018 SC 233]*. According to the learned counsel, if the Administrative Ministry had done proper home work and laid specific proposals touching the vacancy position, these applicants would have been regularised, so that he blames the respondents for their failure for not complying with the directions of this Tribunal.

4. On the other hand, both the learned Standing Counsel, with reference to the file notings which have been produced, pointed out that

pursuant to the directions, cases of 133 casual labourers from all over India were considered and there are numerous reasons to say that they could not have been regularised. According to the learned Standing Counsel, such vacancies are not available, after 01.01.2006, after the implementation of the 6th Pay Commission, since the post of Group D employees stands abolished and in that case the applicants should have qualified to be considered for the posts in Group C. But evidently, they did not have the required qualification. Referring to the order of the Joint Commissioner dated 30.07.2021 it is pointed out that, that order was passed after personal hearing of both the applicants. It is clear that they did not have qualifying body measurements, that they fell-short of height to consider them for the post for appointment as Sepoy and therefore it is impossible to grant them retrospective regularisation.

5. We have gone through the file notings in detail. In fact this is the third time the matter comes up before this Tribunal. At first we disposed of the Original Applications on 09.09.2020. Later, when the compliance report was filed, the matter was again considered by the Tribunal on 12.10.2021. There, having regard to the letter dated

08.05.2019 the respondents were directed to file fresh compliance report specifying the action taken, within a period of three months.

6. It is the common case that both the applicants were appointed as casual labourers and after putting in lengthy service, were granted temporary status with effect from 01.09.1993 on the basis of the scheme introduced by the respondents. Later, on the strength of the decision in *State of Karnataka v. Uma Devi [(2006) 4 SCC 1]* and also on the basis of the case of one Kathiresan, who was one of the casual labourers conferred with temporary status, who was granted regularisation posthumously, these applicants sought regularisation and thus approached this Tribunal and the O.A.s were disposed of on 09.09.2020. In other words, two aspects that prompted the applicants to approach this Tribunal are the judgment rendered in *Umadevi's* case and the posthumous regularisation granted to one of the similarly placed persons, Kathiresan. When Kathiresan's case came, the Joint Secretary of the Department of Personnel and Training directed that similarly placed persons should be treated similarly and that was how complaint arose that the case of the applicants was not considered in the light of the directions of this Tribunal.

7. We have no doubt that the directions issued by the Tribunal should be complied with. All the same, we cannot forget the fact that when *Umadevi* is considered, the most vital aspect is whether the posting of the applicant was against a duly sanctioned post. If only that vital aspect is brought out, paragraph 53 of *Umadevi's* case can be applied to the facts of the case.

8. In the case of Kathiresan, no doubt, Kathireshan was a casual labourer and was given temporary status with effect from 01.09.1993. He was given regularisation posthumously. When that was noticed, the Joint Secretary, directed to examine the cases of all the persons similarly placed. Of course, at the earlier occasions when compliance report was filed, the respondents had not made detailed examination of this aspect. But now, from the file notings produced on 16.11.2022, we are satisfied that the respondents had considered the cases of 160 casual labourers who were granted confirmation on 01.09.1993. Out of them, 27 persons were not reckonable as they were not directly engaged or status of their appointment was not traceable. The case of remaining 133 persons, drawn from all over the country was considered and the respondents have taken a stand that they are not liable to be regularised for three reasons, namely retrospective

regularisation is not possible, there was no such vacancy at that time and that the applicants did not satisfy the qualifications. We are satisfied that the case of the applicants was pointedly considered by the respondents. Of course, the Department of Personnel and Training has taken a stand which cannot be faulted. We are of the opinion that at this distance of time, further directions cannot be issued in the matter, for reasons which are obvious. We are also satisfied that the respondents have taken all out efforts to consider whether any relief can be granted to the applicants. In our view, there are innumerable obstacles on the way of granting any favourable orders to the applicants and hands of the respondents are really tied up, at this distance of time.

9. As stated earlier, *Umadevi* cannot have any application in the facts of the case since it deals with appointments against existing vacancy. Here, the applicants have no such case. Therefore, in our opinion, at the first place the decision in *Umadevi* cannot come to the rescue of the applicants. It is also important to rely on the decision in *State of Rajasthan and others v. Daya Lal and others [(2011) 2 SCC 429]*, where the Apex Court has made it abundantly clear that part-time employees are

not entitled to seek regularisation as they are not working against any sanctioned post.

10. Secondly, regarding the case of Kathiresan also, the file notings clearly indicate that Kathiresan was granted posthumous regularisation on the strength of an order passed by the Administrative Tribunal. There are indications that there were faults on the part of Administrative Department as to why vacancies were not identified at the appropriate time and not filling the same. Whatever it may be, for the reason that an order was passed in the case of Kathiresan, in the absence of particulars, benefit of it cannot be granted to all and sundry. It was done under a court order. Materials are not available as to the circumstances that permitted his regularisation and the applicants cannot be heard to say that they also are entitled to get the benefit of such a grant.

11. Moreover, as rightly noticed and highlighted by the learned Standing Counsel, retrospective regularisation of a post is a strange proposition. In normal course, it cannot be done. Here, benefit was granted to Kathiresan on the basis of the directions of the Tribunal, which cannot be taken as a precedent adoptable by all.

12. Again, as stated earlier, the respondents have considered the case of 133 casual labourers, who were granted temporary status on 01.09.1993. The case of the applicants was considered and both of them had general education qualifications only up to 8th and 9th standard. They have retired from service on 30.09.2011 and 28.06.2013 respectively. Now the question is whether vacancies were available at the time when they were working as casual labourers with temporary status, after 01.09.1993. No doubt, no materials have been collected by the respondents. But we are of the opinion that in the light of the fact that after 01.01.2006 since the Group D posts remain abolished, there is no point in making any further enquiry on it. Group D employees stand re-designated as MTS who fall within the category of Group C for which separate Recruitment Rules have been formulated. Any how, the minimum education qualification required for them is Matriculation or pass in 10th standard. Both the applicants do not have such qualification. Moreover, order of the Joint Commissioner also indicates that they do not have sufficient height so that they could not be considered for the post of Sepoy, following the Recruitment Rules.

13. We have also come across the decision in *Union of India and others v. Ilmo Devi and another* [AIR 2021 SC 4855], where the Apex

Court has stated that it is the settled proposition of law that regularisation of casual labourers or temporary employees can be done only as per the regularisation policy declared by the Government, and nobody can claim regularisation as a matter of right dehors the regularisation policy. Here, as stated earlier, the applicants claim that they should be regularised retrospectively, which is a hard proposition.

14. After considering the materials made available before the Tribunal, we are convinced that the respondents have tried to grant reliefs to the applicants, but unfortunately, that has become not possible. Therefore, in our view, no further orders are warranted, and both the applications are closed, with regrets.

Dated this the 22nd November, 2022

K.V.EAPEN
ADMINISTRATIVE MEMBER

JUSTICE K.HARIPAL
JUDICIAL MEMBER

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