

RESERVED ON 22.03.2024

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 2nd day of April 2024

Hon'ble Mr. Justice Om Prakash VII, Member (J)

Original Application No. 548 of 2013

Mukesh Kumar

.....Applicant

By Adv: Shri Shiv Mangal Prajapati/Sri Prabhav Srivastava

V E R S U S

1. Union of India through Secretary, Department of Posts, Sansad Marg, New Delhi 11,01.
2. The Chief P.M.G. U.P. Circle, Lucknow 228001.
3. The Post Master General, Allahabad Region, Allahabad 211001.
4. The Senior Superintendent of Post Offices, Allahabad Division, Allahabad.
5. The Senior Post Master, Allahabad 211001.
6. Ramu Bhartiya son of Shri Munna Lal, 26 Newada, Hasting Road, Allahabad -1.

.....Respondents

By Adv: Shri Bablu Singh/Shri P.K. Mishra

ORDER

The present O.A has been filed by the applicant under section 19 of the Administrative Tribunal Act, 1985 seeking following reliefs:-

- “(i) To issue an order, rule, direction for effecting regularization the services pertaining to the applicant.*
- “(ii) To issue an order to consider the name of applicant for purpose of seniority from which his junior regularized.*
- “(iii) To issue an order for consequential benefits w.e.f. 3.12.1999.*

- (iv) *To issue an order to restore pay and allowances admissible prior to 1.1.2012 and for payment of arrear of salaries with 18% interest per annum.*
- (v) *To issue an order in nature of mandamus to consider the case and regularization in Grade 'D' cadre and grade.*
- (vi) *To issue order, writ, or direction as deem fit and proper in circumstances of the case”.*

2. The brief facts of the case are that applicant was ordered to work as Outsider Officiating Sweeper against the vacant post of Sweeper under jurisdiction of Senior Post Master, Allahabad Head Post Office. A character certificate dated 01.1.1995 has been issued by Senior Post Master Allahabad in favour of applicant. In the aforesaid letter, working hour of applicant was mentioned as 08 hours a day. Respondent No. 6 has been regularized in Group 'D' post although according to applicant he is 2 years junior to the applicant. Applicant made an application dated 10.11.2000 to D.G. Posts New Delhi seeking for regularization in Group 'D' Sweeper as junior to him has been regularized. He has been paid salary regularly but all of sudden respondents reduced pay of the applicant at the rate of 100/- per w.e.f. 01.01.2012. Against the reduction of salary, applicant submitted an application on 04.10.2012.

3. I have heard Sri Prabhav Srivastava, learned counsel for the applicant and Shri Bablu Singh/Shri P.K. Mishra, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant argued that applicant was engaged as Outsider Officiating Sweeper against the vacant post of Sweeper in the Railway from the year 1994. He was being paid salary as was admissible to a temporary employee regularly but all of sudden salary of the applicant has been reduced at the rate of 100/- per day w.e.f. 01.01.2012. He has also not been issued any show cause notice before reduction of salary. Learned counsel further submitted that respondent No. 6 was regularized on the post of Outsider Officiating Sweeper, he is junior to applicant. He also submitted that since respondent No. 6 is junior to the applicant, the discrimination of respondents for not

regularizing the services of the applicant is violative of Article 14 and 16 of Constitution of India. Being aggrieved, applicant submitted several representations, which has not been decided as yet. Learned counsel contended that since the applicant had worked as Outsider Officiating Sweeper for more than statutory period, thus services of the applicant is liable to be regularized. Learned counsel for the applicant has placed reliance on the following case laws:-

- (i) B.S.N.L. Vs. Bhurumal reported in JT 2013 (15) SC 611;
- (ii) Union of India Vs. Shyam Lal Shukla reported in 2012 (1) ADJ 698 (DB)

5. On the other hand, learned counsel for the respondents contended that applicant was engaged for occasional requirement as part-time to perform sweeping/cleaning work of Head Post Office compound. He was never engaged continuously. Learned counsel further contended that applicant was not given temporary status. He also contended that since the adjustment of the applicant against a regular post was done improperly i.e. no advertisement or notice was issued for filling up the post on which the applicant was adjusted/regularized, his adjustment was terminated after issuing a show cause notice. He further argues that as per the decision in the case of *Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1*, wherein it has been held that back door entrants or irregular appointees have no right to hold a post. Hence, applicant is not entitled for regularization and his services were rightly terminated by the department.

6. I have considered the rival submissions advanced by the learned counsel for the parties and perused the records.

7. In the case of B.S.N.L. Vs. Bhurumal (supra), Hon'ble Supreme Court has held as under:-

“24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under [Section 25-F](#) of the Industrial Disputes Act, even after reinstatement, it is

always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied”.

8. We have perused the case laws referred by the applicant. In the instant case respondent No. 6 is not Safai Karmi and he was appointed against regular post of Group ‘D’ post by the Competent Authority while the applicant was engaged time to time on occasional requirement of sweeping and cleaning of office building. Thus, the case of B.S.N.L. Vs. Bhurumal (supra) is not helpful to the applicant.

9. It is seen from the perusal of record that the applicant was never appointed in the Department on regular basis. No posts were advertised, examination conducted or interview held. Applicant is claiming relief merely on the ground of alleged appointment as Outsider Officiating Sweeper. Applicant has not worked for 240 days continuously in a year. Applicant has failed to produce any appointment order or pay slip to substantiate his claim. Applicant has not been given temporary status. There is no evidence on record to support that applicant had been working in the department during the said period. Even if, his claim is

accepted that he had worked for considerable period in the department, that by itself would not give any right to him for regularization or for appointment of permanent nature in the said department.

10. Constitution Bench of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and Others reported in (2006) 4 SCC 1** has held that absorption, regularization, or permanent continuance of temporary, contractual, casual, daily wage or adhoc employee appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment. The Court further held that constitutional court should not issue direction for regularization of service of such employees.

11. In **Ashwani Kumar and others Vs. State of Bihar and others (1996 Supp. (10) SCR 120)**, this Court was considering the validity of confirmation of the irregularly employed. It was stated:

"So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility."

12. The Hon'ble Apex Court further reiterated the aforesaid law in the case of **Satya Prakash and others Vs. State of Bihar and others reported in 2010 (2) UPLBEC 1181**, wherein following observations were made by the Court:-

"6. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages in the Bihar Intermediate Education Council. In Muadevi's case (supra) this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily

wage or ad hoc employees. This Court held that 5 such directions issued could not be said to be in consistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

7. *paragraph 53 of Umadevi's Judgment, deals with irregular appointments (not illegal appointments). Constitution Bench specifically referred to the judgment in S.V. Narayanappa v. State of Mysore, (1967)1 SCR 128, B.N. Nanjudappa v. T. Thimmiah, (1972) 1 SCC 409, in paragraph 15 of Umadevi's judgment as well.*

8. *Let us refer to paragraph 15 and 16 of Umadevi's judgment in this context. Necessity of keeping in mind the distinction between regularization and conferment of permanency in service jurisprudence has also been highlighted by this Court by referring to the following passages from R.N. Nanjudappa's case, which reads as follows:-*

“If the appointment itself is in infraction of the rules of if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment.”

13. In view of the judgments of Hon'ble Apex Court in the case of **State of Karnataka Vs. Uma Devi (supra)** , **Ashwani Kumar and others Vs. State of Bihar (Supra)** and **Satya Prakash and others Vs. State of Bihar (supra)**, law is now well settled that casual labour/daily wager has no right to seek regularization. In the instant case, even the claim of working of applicant as Outsider Officiating Sweeper for

substantial period of time has not been proved. Certificate issued by the Department concerned is not sufficient to establish the case of applicant for his regularization. If it is presumed that the aforesaid certificate is a genuine document, even then applicant had worked on daily wage basis/part-time basis. Thus, the part-time working in the department did not support the applicant for regularization in the department.

14. Considering all the facts and circumstances of the case, claim of applicant cannot be accepted. Accordingly, O.A. is dismissed. No order as to costs. All associated MAs are disposed of accordingly.

(JUSTICE OM PRAKASH VII)
Member (J)

Manish