

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.Nos.9316 & 9111 of 2014 &
M.P.Nos.2 & 2 and 3 & 3 of 2014

1.K.Kumaresan
2.K.Srinivasan

... Petitioners
[in W.P.No.9316 of 2014]

K.Saravanan

... Petitioner
[in W.P.No.9111 of 2014]

-VS-

1.Union of India, rep. by its
The Assistant Registrar,
Income Tax Appellate Tribunal,
A3, 2nd Floor, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.

2.The Registrar,
Income Tax Appellate Tribunal,
Mumbai.

3.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Campus,
Chennai - 600 104.

... Respondents
[in both W.Ps.]

Common Prayer: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the entire records connected to the order in O.A.Nos.573 and 680 of 2012, dated 10.06.2013 passed by the Central Administrative Tribunal, Chennai Bench and quash the same and allow the O.A.as prayed for.

For Petitioner	:	Mr.M.Gnanasekar
For Respondent No.1	:	Mr.Venkataswamy Babu Special Government Pleader
For Respondent No.2	:	No Appearance
For Respondent No.3	:	Tribunal

COMMON ORDER

[Order of the Court was made by N.AUTHINATHAN, J.]

As the point involved in these Writ Petitions is the same and arising out of a common order, these Writ Petitions are being disposed of by a common order.

2.The petitioners have come up with the present Writ Petitions for a Writ of Certiorari, to call for the records of the order passed by the third

respondent herein, in O.A.Nos.573 and 680 of 2012, dated 10.06.2013 and to quash the same and allow the Original Applications.

3.The writ petitioners, namely, K.Kumaresan; K.Srinivasan and K.Saravanan, were sponsored by Employment Exchange for appointment as casual labourers on daily wages in the Office of the Income Tax Appellate Tribunal, Chennai Bench. K.Kumaresan, was allowed to work since 09.03.2009; K.Srinivasan, was allowed to work since 02.03.2009; and K.Saravanan, was allowed to work since 01.06.2011, by giving breaks.

4.The first respondent sent a proposal to the second respondent for appointment of the petitioners on adhoc basis. The second respondent rejected the proposal for regular / adhoc appointment of the petitioners to the posts of Group 'D', by observing "No daily wagers, No Ad-hoc. Only Outsourcing".

5.Thereupon, the petitioners approached the Central Administrative Tribunal, Chennai Bench, by way of O.A.Nos.573 and 680 of 2012, seeking the following relief : "to direct the respondents to regularize their services against any Group 'D' post and also give them all consequential and monetary and other benefits to which they are entitled."

6.The respondents contested the claim of the petitioners. According to them, the petitioners were appointed purely on temporary basis as casual labourers. Their services could be terminated without notice and without assigning any reason. They have also submitted that the posts of Group-'D' was abolished on account of the recommendations of the Sixth Pay Commission and the Group-'D' posts were upgraded as Group-'C' posts. They have also submitted that DOPT, vide its Office Memorandum No.AB-14017/6/2009-Estt(RR) dated 17.02.2011, requested the Ministries / Departments to intimate their requirements for non-technical Group 'C' posts PB-I Grade Pay of Rs.1800/- to Staff Selection Commission immediately so that the Commission could initiate action for recruitment. As the recruitment rules were under finalisation, the vacancies could not be communicated to the Regional Office of Staff Selection Commission. According to them, the petitioners cannot claim regularisation of services to Group-'D' posts. By virtue of an order dated 20.05.2015 of the Income Tax Appellate Tribunal, Mumbai Bench, the erstwhile Group-'D' i.e. Record Sorter, Photocopier Operator, Daftary, Senior Peon, Peon, Chowkidar, Safaiwala, Farash, Mali, has been redesignated as Multi Tasking Staff (Group-'C').

7.The Central Administrative Tribunal, Chennai Bench, placing reliance on the decision of the Supreme Court in ***STATE OF KARNATAKA vs. UMADEVI [(2006) 4 SCC 1]***, rejected the claim of the petitioners and dismissed O.A.Nos.573 and 680 of 2012, by a common order dated 10.06.2013.

8.The learned counsel appearing for the petitioners would contend that the Tribunal has dismissed the Original Applications mechanically by applying the decision in Umadevi's case to the petitioners' case. He has also pointed out that the second respondent has appointed and regularised several persons, who are similarly placed but the claim of the petitioners have been negatived.

9.Admittedly, the petitioners were appointed as casual labourers on daily wages (on no work no wages). It is also not in dispute that their postings are purely temporary and could be terminated without notice and without assigning any reason.

10.In ***STATE OF KARNATAKA vs. UMADEVI [(2006) 4 SCC 1]***, the Supreme Court has held thus: “**48**.....*Those who are working on daily wages formed a class by themselves, they cannot claim that they are*

discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.” The Supreme Court has also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what the Supreme Court has laid down in Umadevi's case, will stand denuded of their status as precedents.

11. It is clear from the dictum laid down by the Supreme Court that casual labourer / temporary employee do not have any right to regular or permanent employment. It has also been laid down by the Supreme Court that the length of service as a casual labourer would not be of any avail to the employees like the petitioners. The Supreme Court observed in paragraph 43 of Umadevi's case thus: *"43..... It has also to be clarified 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."*

12. In the case at hand, the candidates were drawn from Employment Exchange for being temporarily appointed as casual labourers. It has not been established by the petitioners before this Court that such a mode of appointment is in accordance with the relevant rules. If so, the petitioners request for regularisation against Group-'D' posts cannot be entertained.

13. Even though, a ground has been taken in the Writ Petition that Umadevi's case has been mechanically applied by the Central Administrative Tribunal, to the facts of this case, it has not been explained or substantiated.

The learned counsel for the petitioners did not advert to this aspect at all in the course of arguments. We are of the considered view that the decision in Umadevi's case will apply on all fours to the present case. In these circumstances, it cannot be said that the petitioners have established a legal right to be made permanent employees.

14.The petitioners have also taken a ground that the Central Administrative Tribunal, Chennai Bench, failed to follow the judgment of the co-ordinate Bench of the Central Administrative Tribunal, Mumbai Bench, rendered in O.A.593 to 598 of 2007, wherein the Central Administrative Tribunal, Mumbai Bench, directed the respondents to consider the case of the applicants therein, who were initially appointed on adhoc basis, for regularisation. It may straight away be pointed out that the legal position as declared and crystallised by the Supreme Court in Umadevi's case would prevail. As a matter of fact, the Supreme Court judgment would not appear to have been brought to the notice of the Central Administrative Tribunal, Mumbai Bench, inasmuch as there is no reference to the decision of the Supreme Court in the judgment.

15.The next contention of the learned counsel for the petitioners is that the petitioners were discriminated against inasmuch as persons, who are

similarly situated were appointed and the claim of the petitioners have been negatived. It was pointed out that by an order dated 07.06.2010, the Income Tax Appellate Tribunal, Mumbai, appointed 36 persons to officiate as Peon/Safaiwala/Gardner on adhoc basis, who were appointed initially to officiate as Peon/Safaiwala/Gardner on regular basis with effect from 07.06.2010, until further orders. As per order dated 08.11.2011, the Income Tax Appellate Tribunal, Mumbai, appointed one Vinod Kumar to officiate as Safaiwala on adhoc basis for a period of six months. As per order dated 18.07.2012, the Income Tax Appellate Tribunal, Mumbai, appointed one Nhanu N.Morajkar to officiate as Lower Division Clerk on purely adhoc basis for a period of three months. As per order dated 28.08.2013, the Income Tax Appellate Tribunal, Mumbai, appointed one Nilesh Naik to officiate as Peon on adhoc basis, until further orders. As per order dated 28.08.2013, the Income Tax Appellate Tribunal, Mumbai, appointed one Jayesh S.Waghela to officiate as Chowkidar on adhoc basis, until further orders. By an order dated 06.01.2015, the Income Tax Appellate Tribunal, Mumbai, appointed 6 officials, who were appointed initially as Lower Division Clerk on adhoc basis were appointed as Lower Division Clerk on regular basis with effect from 06.01.2015. In compliance with the order dated 21.07.2014 of the Central Administrative Tribunal, Mumbai Bench in O.A.No.817 of 2011, 50 officials, who were appointed initially as Lower Division Clerk on adhoc basis were appointed as

Lower Division Clerk on regular basis with effect from 24.04.2014.

16. The plea of discrimination put forth by the petitioners has to be considered in the light of the decision in Umadevi's case. An apposite reference may be made to the observations of the Supreme Court in para 53. The relevant portion reads thus: "53.....*"Union of India, the State Governments and their instrumentalities should take steps to regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."*

17. The said one time measure cannot be made applicable to the petitioners as they have not worked for 10 years or more. It is also one time measure which means that it cannot be repeated. If the facts of the case at

hand are considered in the back drop of the decision of the Supreme Court it would be obvious that the prayer of the petitioners for regularisation in Group-'D' posts would be incapable of being granted. The fact that certain appointments have been made as stated supra, which are not in accordance with the dictum laid down by the Supreme Court would not be a basis for a claim of discrimination.

18.It is not known how the judgment of the Supreme Court in Umadevi's case escaped the attention of the respondents while making those appointments. As per the dictum laid down by the Supreme Court in ***State of U.P. vs. Neeraj Awasthi [(2006) 1 SCC 667]***, no appointment could be made in contravention of statutory rules. It has also been held that the past alleged regularisation or appointment does not connote entitlement to further regularisation or appointment.

19.The claim of the petitioners could not be considered favourably in view of the dictum laid down by the Supreme Court. We are of the view that the Central Administrative Tribunal, Chennai Bench, has come to a correct conclusion in rejecting the claim of the petitioners in the light of the decision in Umadevi's case. We do not find any valid reasons to interfere with the findings of the Central Administrative Tribunal, Chennai Bench.

20. For the reasons stated supra, we are of the considered view that the relief sought for could not be granted to the petitioners. The conclusion reached by the Central Administrative Tribunal, Chennai Bench, deserves to be upheld and is accordingly upheld. Consequently, these Writ Petitions are dismissed and connected Miscellaneous Petitions are closed. No costs.

[S.M.K., J.] [N.A.N., J.]
10.11.2016

Index : Yes/No
Internet : Yes

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To

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Union of India,
Income Tax Appellate Tribunal,
A3, 2nd Floor, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.
2. The Registrar,
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3. The Registrar,
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S.MANIKUMAR, J.,
and
N.AUTHINATHAN, J.,

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