

**Jitendra Kumar and Ors vs.uoi and Ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1220392](http://sooperkanoon.com/1220392)

**Court :** Delhi

**Decided On :** Jan-08-2019

**Appellant :** Jitendra Kumar and Ors

**Respondent :** Uoi and Ors

**Advocate for Def. :** Mr. R. M. Sinha

**Advocate for Pet/Ap. :** Mr. T.D. Yadav

**Judgement :**

\$~19 \* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved:

19. h December, 2018 Pronounced on:

08. h January, 2019 + W.P.(C) 7937/2017 & CM APPLN. 32765/2017 1.  
JITENDRA KUMAR AND ORS Through: Mr. T.D. Yadav, Advocate. ....

... Petitioner

s Versus UOI AND ORS Through: Mr. R. M. Sinha, Advocate for R-2 & .....

... RESPONDENTS

R-3. CORAM: HON'BLE MR. JUSTICE SURESH KUMAR KAIT Vide the present  
petition, the petitioners seek direction thereby setting

JUDGMENT

aside the impugned order dated 31.08.2017 and direct the respondents to reinstate the petitioners in the service forthwith as MTS as per Office Order dated 27.07.2017 and further the petitioners may be allowed to work continue on adhoc basis as MTS till regularization and also seeks direction thereby directing the respondents to grant all the consequential benefits like W.P.(C) 7937/2017 Page 1 of 17 seniority and pay and allowances.

2. The case of the petitioners is that the name of the petitioner No.1, was sponsored through Employment Exchange and appointed as Casual Labour on a daily wage basis vide order dated 26.09.2005 and one colleague, Mr. Satrugan Prasad was regularized as peon w.e.f. 30.04.2007. Subsequently, the respondent advertised for Recruitment as daily wager vide letter dated 03.08.2007 and name of the petitioner Nos. 2 and 3 were sponsored from Employment Exchange and they were appointed as casual labourers on daily wage basis for 89 days w.e.f. 21.08.2007. Thereafter, the petitioners were regularly engaged 89 days with one day technical break from time to time i.e. 2007 onwards by the respondents till office order dated 16.03.2016. The work and conduct of the petitioners was satisfactory with the satisfaction of superior officers therefore, the petitioners were promoted from daily wager to adhoc basis as MTS, after completion of 11 years of service, for the period of one year vide order dated 22.06.2016 in accordance with Do PT OM dated 14.11.2007.

3. Learned counsel for the petitioners submits that subsequently the respondents had decided to extend appointment of the petitioners in the W.P.(C) 7937/2017 Page 2 of 17 National Commission for Scheduled Tribes (hereinafter shall be referred as Commission) purely on adhoc basis w.e.f. 16.06.2017 to 15.06.2018 in the pay Matrix Level 1 under 7th CPC of Rs.18,000-41,1000 against the existing vacancies of MTS for the period of one year or further orders whichever is earlier and posted at Commission Head Quarters vide order dated 27.07.2017. Thereafter, without completing tenure upto 15.06.2018 by the petitioners, the respondents passed impugned order dated 31.08.2017 withdrawing order dated 27.07.2017 with immediate effect. Being aggrieved, the petitioners have filed the present petition.

4. Learned counsel for the petitioners further submits that the impugned order dated 31.08.2017 is not reasoned and speaking order as per law laid down by the Supreme Court in case of Kranti Association Private Limited vs. Masood Ahmed Khan & Ors. (2010) 9 SCC496 whereby held as under:-

"47. Summarizing the above discussion, this Court holds: (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. (b) A quasi-judicial authority must record reasons in support of its conclusions. W.P.(C) 7937/2017 Page 3 of 17 (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies. (g) Reasons facilitate the process of judicial review by superior Courts. (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system. (j) Insistence on reason is a requirement for both judicial accountability and transparency. (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. W.P.(C) 7937/2017 Page 4 of 17 (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of

judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737). (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR553 at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions". (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

5. It is further submitted that the respondents have withdrawn office order dated 27.07.2017, without show cause notice, by which they have extended adhoc period upto 15.06.2018 which is against Principal of natural justice.

6. Learned counsel further submits that other colleagues and similarly W.P.(C) 7937/2017 Page 5 of 17 situated employee namely Satrugan Prasad was regularized vide order dated 30.04.2007. In addition to above, Man Singh Meena was regularized w.e.f. 29.07.2009 vide office order dated 29.01.2013. But the petitioners were discriminated and they continued as adhoc employees. Thus, it is discrimination against the petitioners which cannot be accepted under the settled position of law.

7. Learned counsel further submits that the petitioners have completed more than 11 years of service. Therefore, they are entitled regularization as per para 44 & 53 in view of the judgment of Honble Supreme Court in State of Karnataka and Ors. vs. Uma Devi and Ors. 2006 SCC (L & S) 753.

8. Learned counsel further submits that due to the discriminatory attitude of the respondents, the petitioners have become overage for employment as presently petitioner No.1 is 32 years old, petitioner No.2 is 35 years old and petitioner No.3 is 32 years old. Because the services of the petitioners have suddenly terminated

while other similarly situated employees like Satrugan Prasad, Man Singh Meena have been regularized. Thus, it is clear that the action of the respondents is illegal arbitrary unjust and W.P.(C) 7937/2017 Page 6 of 17 discriminatory which is violative of Article 14 and 16 of the Constitution of India.

9. It is further submitted that the respondents in their counter affidavit have raised preliminary objection regarding OM dated 23.07.2001 and meeting held in the Ministry of Tribal Affairs on 16.08.2017. However, thereafter the petitioners filed rejoinder on 20.11.2017 stating that petitioner were promoted as MTS vide DOPT OM dated 14.11.2007 with the approval of competent authority and above said DOPT OM dated 14.11.2007 had taken into account of instruction contained in OM dated 23.07.2001 at the time of appointment as MTS.

10. Learned counsel for the petitioner has pointed out that minutes of meeting dated 16.08.2017 was forwarded for necessary action to the joint secretary of the Commission on 05.09.2017 but the services of the petitioner were terminated with retrospective effect w.e.f 31.08.2017 which is not permissible under law. He submits, the entry of the petitioners is not from the back door, however, they were sponsored through employment exchange followed by interviews.

11. It is further submitted that Panu Singh Munda, whose claim for W.P.(C) 7937/2017 Page 7 of 17 regularization of the services was rejected by the respondents, said Panu Singh Munda challenged the same before High Court of Jharkhand, Ranchi in WPS-6462 of 2017 and the same was disposed of vide order dated 21.08.2018 thereby directing the respondents to examine the individual status of each and every petitioners in accordance with law and thereafter, if there is no other legal impediment, pass a speaking order assigning concrete and valid reasons consideration/non-consideration of the cases of petitioners for regularization of their services. Pursuant to said order, the service of Panu Singh Munda has been regularized. Thus, the petitioners are also entitled for the same.

12. On the other hand, learned counsel for the respondent submits that the petitioners were appointed on purely adhoc/temporary basis group C employees. Since, the adhoc appointments were found to be against the Office Memorandum

No.28036/1/2001-Estt(D) dated 23.07.2001 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India and has not approved the appointments, thus withdrawn. The said Office Memorandum stipulates that no appointment shall be made on adhoc basis by direct recruitment from Open-Market. W.P.(C) 7937/2017 Page 8 of 17 13. It is further submitted that the petitioners were appointed as Multi Tasking Staff (MTS) purely on adhoc basis for one year w.e.f 16.06.2016 vide Order No.1/5/NCST/2015-Estt. dated 22.06.2016, with the following conditions:-

"(i) The appointment are purely on Ad-hoc basis and will not entail any claim/rights for regular appointment and/or confirmation thereof. (ii) The services can be dispensed with at any time at pleasure of the competent authority, NCST without giving any prior intimation/ notice and without assigning any reason.

14. Learned counsel submits that the adhoc appointment was extended for another one year w.e.f. 16.06.2017 to 15.06.2018 with above mentioned condition vide order dated 17.07.2017. Thereafter, a meeting was held on 16.08.2017 in the Ministry of Tribal Affairs with Chairperson, Vice- Chairperson and Members of Commission to discuss various issues related with the Commission. In the meeting, the issue of appointments of MTS on adhoc basis by the Commission was also discussed at item No.21, wherein it was pointed out that the appointment of Four MTS made on Government Pay scale is a clear case of misinterpretation and violation of delegation of power to the Commission. Accordingly, in view of the discussion in the meeting dated 16.08.2017 and after careful consideration and on W.P.(C) 7937/2017 Page 9 of 17 administrative reasons, the order dated 27.07.2017 of the Commission was withdrawn with immediate effect vide office order dated 31.08.2017.

15. It is further submitted that on the basis of Department of Personnel and Training Office Memorandum No.28036/1/2001-Estt (D) dated 23.07.20014 services of Shri Pappu Singh Chaudhary, Shri Chhagan Lal and Shri Vijay Kumar, MTS were also terminated vide Office Order No.1/6/NCST/2015-Admn. dated 31.08.2017 which is at Annexure-III with rejoinder.

16. Learned counsel appearing on behalf of the respondent has relied upon the case of Uma Devi (supra) whereby the Honble Supreme Court has held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage W.P.(C) 7937/2017 Page 10 of 17 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. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. Thus, he cannot bargain for regularization thereafter. It would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court. But not under W.P.(C) 7937/2017 Page 11 of 17 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.

17. Learned counsel for the respondent has relied upon the case of Union of India & Anr. vs. Arulmozhi Iniarasu & Ors. decided in Civil Appeal Nos. 4990-4991/2011 on 6th July, 2011, whereby held that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and correspondence legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated, eligibility and continuance working for, however, long period should not be permitted to over reach the law. Recruitment of rules through Commission cannot be substituted by human consideration.

18. In view of above, learned counsel for the respondents submits that the petitioners are purely appointed on ad hoc basis and since their posts are not sanctioned, therefore, by the impugned order, their services have been withdrawn. Thus, there is no legality in the impugned order, therefore, the present petition deserves to be dismissed. W.P.(C) 7937/2017 Page 12 of 17 19. I have heard learned counsel for the parties.

20. The name of the petitioner No.1 was sponsored through Employment Exchange and appointed as Casual Labour on a daily wage basis vide order dated 26.09.2005. Subsequently, the respondent advertised for Recruitment as daily wager vide letter dated 03.08.2007 and name of the petitioner Nos. 2 and 3 were sponsored from Employment Exchange. Consequently, they were appointed as casual labourers on daily wage basis for 89 days w.e.f. 21.08.2007. Thereafter, the petitioners were regularly engaged for 89 days with one day technical break from time to time i.e. 2007 onwards by the respondents till office order dated 16.03.2016. The work and conduct of the petitioners was satisfactory with the satisfaction of superior officers therefore, the petitioners were promoted from daily wager to adhoc basis as MTS after completion of 11 years of service for the period of one year vide order dated 22.06.2016 in accordance with Do PT OM dated 14.11.2007.

21. It is not in dispute that one Satrugan Prasad who was similarly situated employee, regularized as peon w.e.f. 30.04.2007. It is also not in dispute that one Man Singh Meena also similarly situated employee, had been regularized w.e.f.

29.07.2009 vide office order dated 29.01.2013. In W.P.(C) 7937/2017 Page 13 of 17 addition to above, Panu Singh Munda whose claim for regularization was rejected by the respondents, was regularized pursuant to order dated 21.08.2018 passed by the High Court of Jharkhand, Ranchi in WPS-6462 of 2017. It is also not in dispute that the petitioners have removed from service pursuant to Office Memorandum No.28036/1/2001-Estt(D) dated 23.07.2001 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, whereas, the petitioners were promoted from daily wager to adhoc basis as MTS after completion of 11 years of service in accordance with service for the period of one year vide order dated 22.06.2016 in accordance with Do PT OM dated 14.11.2007.

22. When issue of regularization came before the Supreme Court in case of Uma Devi (supra), the Honble Supreme Court directed the concerned Departments to regularize the employees who have completed 10 years in service, as one time solution. Accordingly, the various departments regularized number of employees pursuant to the directions passed in case of Uma Devi (Supra).

23. But the things did not move according to the directions of the W.P.(C) 7937/2017 Page 14 of 17 Supreme Court. Purpose of the directions of the Supreme Court was that those who have completed 10 years, they shall be regularized and thereafter no one shall be appointed as Adhoc without due process of law. If that would have been complied with by all the departments then, again and again writ petitions would not have come to the Courts for regularization. After the directions of the Supreme Court, the departments of the state and union continued to appoint on Adhoc basis, on contract basis and thereafter, they were regularized in the same department which is contrary to the directions of the Uma Devi. Since, the departments are engaging the services of the employees on daily wage basis or adhoc basis, then, the employees develop legitimate expectation to get regularized in the department.

24. Even in the present case, the Commission has regularized similarly situated namely Satrughan Prasad, Man Singh Meena and Panu Singh Munda. Thus, the petitioners also had legitimate expectation to get regularized but the respondents

failed to do so in case of the petitioners.

25. It is not in dispute that the petitioner No.1 is working from the year 2005 and petitioner Nos. 2 and 3 are working since 03.08.2007 with one day technical break and thereafter, vide order dated 22.06.2016 were promoted W.P.(C) 7937/2017 Page 15 of 17 from daily wager to adhoc basis as MTS after completion of 11 years of service. Now the petitioner No.1 has attained age of 32 years, petitioner No.2 is 35 years and petitioner No.3 is 32 years. Thus, they almost have become overage to get appointment in any public service authority.

26. It is not in dispute that they were aware about their adhoc appointments but when similarly situated as mentioned above were regularized then they continued in the service having legitimate expectation to get regularized in the Department. The impugned order dated 31.08.2017, whereby the office order dated 27.08.2017 has been withdrawn, is not reasoned order and without giving the show cause notice to the petitioners. I am of a considered view that when, 10 to 13 years of service is terminated, at least such employees required a hearing so that they can put their grievance before the authority. However, the respondents measurable failed on that aspect.

27. Accordingly, in view of the above discussion, I hereby set aside order dated 31.07.2017 by directing the respondents to reinstate the petitioners in service forthwith as MTS and allow them to work on adhoc basis till regularization. The petitioner shall also be entitled for all consequential W.P.(C) 7937/2017 Page 16 of 17 benefits like seniority and pay and allowances. The order to reinstate the petitioners shall be issued within four weeks from the receipt of this order.

28. In view of the above, the petition is allowed with no order as to cost. CM APPLN. 32765/2017 In view of the order passed in the present writ petition, the application CM APPLN. 32765/2017 has been rendered infructuous and is, accordingly, disposed of. (SURESH KUMAR KAIT) JUDGE JANUARY08 2019 rd W.P.(C) 7937/2017 Page 17 of 17