

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2563/2014

Reserved on: 17.07.2019
Pronounced on: 08.08.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Smt. Sunheri Devi,
(Aged 45 years)
W/o Late Shri Balbir Singh
R/o House No.143, Block-II,
Village Jatol, Tehsil Panipat,
District Panipat (Haryana)
Post Sweeper.

... Applicant

(By Advocate: Mr. Anuj Aggarwal)

VERSUS

1. The Joint Secretary,
Union of India,
Ministry of Law & Justice,
Department of Legal Affairs,
Implementation Cell, Shastri Bhawan,
New Delhi-110001
2. The Superintendent (Legal)
Ministry of Law & Justice,
Department of Legal Affairs,
Litigation (LC) Section, Tis Hazari Courts,
Delhi-110054.

... Respondents

(By Advocate: Mr. Manish Kumar)

ORDER

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Mr. Anuj Aggarwal, counsel for applicant and Mr. Manish Kumar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- "(i) Issue an appropriate order or direction thereby directing the respondents to regularise the service of the applicant on the post of Peon/Sweeper from the initial date of her appointment

and pay her all consequential benefits, monetary as well as non-monetary thereof; and

- (ii) Issue an appropriate order or direction thereby directing the respondents to pay the minimum wages as revised from time to time by the Central Government to the applicant from the date of her appointment with effect from 01.01.1999 till date as being paid to a full time daily wager Sweeper/Peon along with interest to be calculated @ 18% per annum.
- (iii) Pass any such other or further order(s) as this Hon'ble Tribunal may deem fit and appropriate in the interest of justice and in favour of the applicants.
- (iv) Allow the present application with cost, in favour of the applicants."

3. The relevant facts of the case are that applicant was appointed as a part-time Sweeper by the respondents on 01.01.1991. She was initially paid in 1991, Rs.200/- per month and at the time of filing of this application, she was paid Rs.3500-/per month. Her case is that the amount paid to her is much less than the minimum wages being paid to full time daily wager Sweeper and that one Gajender and another Praveen who were juniors to her and who were also engaged as daily wagers were subsequently regularized and appointed as Peons in the year 2010, whereas she was not regularized even as on today.

4. The respondents in their counter affidavit admitted that she was engaged as part time Sweeper on 01.01.1991 and denying her averments regarding amounts having been paid to her. They have averred that the amount paid to her was enhanced from time to time and she was paid Rs.5,000/- per month. They have further stated that the said Shri Gajender was regularized and appointed as Peon in 2010 because he was registered in the Employment Exchange (EE) prior to being engaged by the respondents, whereas the applicant is not entitled to be regularised as

she was not registered or sponsored by the EE. The relevant paras of the averments made by the respondents are extracted below:-

“(d) In so far as the factual position is concerned, four part-time sweepers are working in this Department and are presently being paid Rs.5000/- pm for the duties being performed by them. The particulars of the persons engaged for the purpose are detailed below:-

S.No.	Name of the person	Place of working	Date of initial engagement.
1.	Smt. Sunheri Devi	Tis Hazari Court	1.01.1991
2.	Sh.Sarwan Kumar	Delhi High Court	1.08.2001
3.	Shri Devraj	ATFE	1.12.2004
4.	Sh.Arvind Giri	ATFE	1.07.2005
xxx		xxx	xxx

4.6. The averments made by the applicant in these paras are vehemently denied. It is submitted that applicant has cited names of Shri Gajender and Shri Praveen stating they were regularized while her claim for regularization was not even considered. The applicant has stated that both of them were her juniors. In so far as this aspect is concerned, Shri Gajender was engaged as a daily wager for full time in the year 1997 who was subsequently appointed as a Peon in the year 2010. The applicant cannot seek parity with the above persons cited because they happen to be duly registered in the Employment Exchange prior to their being initially being engaged and later appointed as Peon based on the Government instructions on the issue. The applicant having not been registered /sponsored through the Employment Exchange cannot claim for regular appointment as Peon/Sweeper.....”

5. The counsel for the applicant further submitted that in 2013, the applicant was considered for regularization but, however, she was not regularized. In support of his contention, he produced a note sheet dated 11.10.2013 of the respondents. The counsel for the applicant further submitted that for the last 29 years the respondents having engaged the applicant and her services were accepted to be satisfactory and yet they are not regularizing her services though her juniors have been regularized and the respondents being Government department they should have

acted as model employer complying with the provisions of the Minimum Wages Act and avoided exploitative practice of continuing the applicant for last 29 years without regularizing. In support of his contention, the counsel for the applicant relied upon the law laid down by the Hon'ble Supreme Court in the cases of **Narendra Kumar Tiwari and Others Vs. State of Jharkhand and Others** (2018) 8 SCC 238) and **Sheo Narain Nagar and Others Vs. State of Uttar Pradesh and Another** (2018) 13 SCC 432). He particularly brought to our notice para 7 of the judgment in the case of Sheo Narain Nagar and Others (supra) which is extracted below:

"7. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. **They are being continued in service without payment of due salary for which they are entitled on the basis of [Article 14, 16](#) read with [Article 34 \(1\)\(d\)](#) of the Constitution of India as if they have no constitutional protection as envisaged in [D.S. Nakara v. Union of India](#), AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc.** There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally

unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). **Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006.** The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. **This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra)."**

(Emphasis supplied)

6. In view of the fact of the case that the applicant has been engaged for the last 29 years continuously as part time Sweeper and she has been denied regularization only on the ground that she has not been sponsored by the EE, though her juniors have been regularized in 2010 only on the ground that they have been sponsored by the EE and at no point of time her services are recorded to be un-satisfactory and in view of the law laid down by the Hon'ble Supreme Court referred to above, we are of the view that applicant is entitled for the relief prayed for and hence we allow the OA. We direct the respondents to regularize the service of the applicant as Peon from the date on which her junior Shri Gajender was regularized as Peon, with all consequential benefits. The respondents are directed to regularize the service of the applicant, as stated above within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Pradeep Kumar)
Member (A)

(S.N.Terdal)
Member (J)

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