



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 6427 of 2019)**

USHABEN JOSHI

....APPELLANT(S)

VERSUS

UNION OF INDIA AND OTHERS

....RESPONDENT(S)

ORDER

1. Heard.
2. Leave granted.
3. This appeal takes exception to the judgment dated 5th April, 2018 passed by learned Division Bench of the High Court of Gujarat, dismissing the Special Civil Application No. 5115 of 2018 preferred by the appellant and affirming the order dated 29th June, 2016 passed by the Central Administrative Tribunal, Ahmedabad(hereinafter referred to as the 'CAT'), rejecting the Original Application No. 50 of 2012 preferred by the appellant with a prayer that the respondents be directed to regularise her services in the Group 'D' post.

4. As per admitted facts obtaining from record, the appellant was engaged as a 'water woman' in the office of respondent No. 3-Superintendent of Post Offices, Kutch Division, Bhuj, in February, 1986. Another lady namely, Smt. K.M. Vaghela joined services in the same office as a 'Safai Karamchari' in the year 1991. Indisputably, the appellant as well as Smt. Vaghela were both performing duties as contingency workers. Having continuously served in the Posts and Telegraphs Department for more than sixteen years, the appellant submitted a representation dated 27th January, 2003 to the concerned authorities, requesting to consider her case for regularization and to grant her a temporary status in the Group 'D' cadre in terms of the judgment of this Court in the case of **Daily Rated Casual Labour v. Union of India**¹. The departmental authority communicated the rejection of the said representation to the appellant *vide* letter dated 31st January, 2003 upon which the appellant approached the CAT by filing Original Application No. 530 of 2003, seeking a direction upon the respondents to regularise the appellant in the Group 'D' post with consequential benefits. The CAT disposed of the Original Application No. 530 of 2003 *vide* order dated 20th October, 2004,

¹ (1988) 1 SCC 122

directing the respondent-authorities to consider the appellant's case for conversion to a full time employee in terms of the circular issued in the year 1992 within a period of three months. The circular dated 16th September, 1992 provided a scheme for regularisation of the part-time labourers as 'full time', with a stipulation that if part-time casual labourers are working for five hours or more, it may be examined as to whether they can be made full-time by readjustment or a combination of duties. However, there should be no engagement of fresh casual labourers.

5. Pursuant to the CAT's order, the appellant filed a representation to the concerned authorities. However, the authorities rejected the representation *vide* communication dated 29th December, 2004, observing that the appellant was a contingency paid part-time 'water woman' doing four hours of work each day. She was being paid Rs.1796/- per month as a contingency allowance calculated on the basis of the number of working hours and thus, she was not entitled to any benefit under the scheme/circular. It was further observed that neither the 1999 scheme, which was applicable to the Department of Telecommunication, nor the 1984 circular, applied to the

appellant, and that there were no rules or instructions pertaining to the Posts and Telegraph Department covering her case.

6. Being aggrieved by the aforesaid communication, the appellant preferred Special Civil Application No. 9398 of 2005 in the High Court which, however, was withdrawn with a liberty to challenge the communication dated 29th December, 2004 before the CAT. Accordingly, the appellant filed a fresh Original Application No. 50 of 2012 before the CAT, seeking the relief of grant of temporary status and absorption in terms of the scheme framed pursuant to the judgment of this Court in the case of **Daily Rated Casual Labour**(*supra*). The CAT rejected the Original Application filed by the appellant *vide* judgment dated 29th June, 2016. The appellant then filed a Review Application No. 11 of 2005 before the CAT, which too came to be rejected by CAT on the ground that the same was not maintainable.

7. Being aggrieved, the appellant filed Civil Application No. 5115 of 2018 before the High Court of Gujarat with a prayer to mandate the respondents to regularise and grant the minimum of pay scale to the appellant with permissible allowances payable to Class IV employees of the respondent-Department, with consequential benefits including arrears of pay with interest. The High Court

dismissed the said Special Civil Application *vide* order dated 5th April, 2018, observing that the writ petitioner i.e., the appellant herein, was a contingency paid part-time 'water woman' working only for four hours a day. The High Court further held that the claim of the appellant that she was working full-time has not been established and proved, and thus, the appellant was not entitled to the relief claimed for by virtue of the judgment in the case **of Secretary, State of Karnataka and Ors. v. Uma Devi (3) (2006) 4 SCC 1**, and **Union of India and Ors. v. A.S. Pillai and Others (2010) 13 SCC 448**. Being aggrieved, the appellant has approached this Court by way of this appeal by special leave.

8. Learned counsel for the appellant, vehemently and fervently contended before us that the appellant has continued to serve the respondent-Department as a water woman for a period of more than 30 years without any break. The Department has regularised the services of one Smt. K.M. Vaghela, an employee performing duties similar to the appellant, who joined the services in the office of Superintendent of Post Offices, Kutch Division, Bhuj six years after the appellant, i.e. in the year 1991. Indisputably, the appellant as well as Smt. K.M. Vaghela were contingency workers, and since a person much junior in length of service has been

regularised, manifestly the appellant has been discriminated vis-a-vis Smt. K.M. Vaghela and hence, she is entitled to the same relief. In order to buttress this contention, the appellant has filed a rejoinder affidavit highlighting the contents of para 15 of the reply affidavit dated 9th May, 2024 filed by the respondents. The said para of the reply affidavit filed by respondents is quoted hereinbelow for ready reference: -

“Para 15. It is respectfully submitted that in compliance of the order dated 28.07.2015 passed by the Hon’ble CAT in OA No. 51/2013, Smt. K.M. Vaghela was selected as MTS during DPC whereas the case of Smt. Ushaben Joshi was rejected by both the Hon’ble CAT as well as by the Hon’ble High Court. It is therefore respectfully submitted that the present petitioner has not been discriminated by the respondents. It is further submitted that the petitioner does not fall within the purview of Casual Labour as well as does not(sic) fulfil the conditions as required under Recruitment Rules.”

9. Learned counsel submitted that the bare perusal of the order dated 28th July, 2015 passed by CAT in the case of Smt. K.M. Vaghela would make it clear that no such mandate was given by the Tribunal that the respondents should regularise the services of Smt. K.M. Vaghela. The only direction of the CAT was to consider her case. The DPC took an independent decision uninfluenced by the direction given by the CAT to regularise the services of Smt. K.M. Vaghela.

10. Learned counsel for the appellant, submitted that it is clear that the Department has discriminated between two similarly placed employees without any justification, inasmuch as Smt. K.M. Vaghela, whose services were regularised, joined the Department as a contingency-paid part-time 'Safai Karamchari' only in the year 1991. It was urged by the learned counsel that the appellant having served in the Department for a period of more than 30 years is entitled for the relief prayed for.

11. *Per contra*, learned counsel for the respondents, vehemently and fervently opposed the submissions advanced by learned counsel for the appellant. He urged that Smt. K.M. Vaghela was engaged as Water/Sweeper woman at the Superintendent of Post Offices, Kutch, Bhuj and that her services were confirmed in compliance of the direction given by CAT *vide* order dated 28th July, 2015.

12. We have considered the submissions advanced at bar and have gone through the material available on record.

13. The central issue requiring adjudication in the matter is as to whether the respondents have discriminated between two similarly placed employees.

14. The fulcrum of the respondents' case for justifying the decision to regularise the services of Smt. K.M. Vaghela is that the said decision was taken in purported compliance of the order passed by CAT, whereas the appellant did not have any such order in her favour.

15. On going through the record, it is evident that in the case of Smt. K.M. Vaghela, the CAT *vide* order dated 28th July, 2015, had simply directed the respondent-Department to consider the case of Smt. K.M. Vaghela for appointment to the post of Multi-Tasking Staff(in short 'MTS'). The CAT never mandated the respondent-Department to regularise her services. A careful perusal of Minutes of Meeting of DPC dated 18th October, 2016 held regarding direct recruitment to the cadre of MTS for the year 2016-17 makes it clear that Smt. K.M. Vaghela was found eligible and was selected/appointed as MTS without being influenced by the order passed by the CAT. The relevant extracts from the minutes of meeting dated 18th October, 2016 are reproduced hereinbelow: -

“ DPC has gone through all relevant records and found that Smt K M Vaghela contingent paid worker o/o SPOs Bhuj is found eligible after giving age relaxation vide Para 8 of GI Dept. of Post OM No. 51016/2/90/Estt. (c) dated 10-09-1993 and selected as MTS as detailed below.

S.No.	Name of casual labourers	Category	Edu. Quali.	Date of Birth	Date of entry in the Deptt.	Remarks
1.	Smt. KM Vaghela Water/sweeper woman DO Bhuj	OC	III	01-06-1964	Jan-1991	-

”

16. Evidently, the decision to regularise the services of Smt. K.M. Vaghela and in appointing her as an MTS was an independent decision of respondent-Department uninfluenced by the CAT's order. Hence, the argument advanced by the learned counsel for the appellant that she has been discriminated vis-à-vis Smt. K.M. Vaghela who has been given the benefit of regularization is substantiated and established from record.

17. The respondents have not indicated anything in the affidavit filed in pursuance of the order dated 27th February, 2024, that the nature of duties or the hours of work being performed by Smt. K.M. Vaghela were any different from that of the appellant. Thus, the defence taken by the respondents for their decision not to confirm the appellant in services that she was only performing duties as a contingency worker(water woman) for four hours a day is not substantiated from any acceptable material on record. Indisputably, the appellant continuously served the Department

for more than three decades as a contingency 'water woman'. Keeping in view the fact that an employee similarly placed but inducted in service after nearly six years from the date of employment of the appellant with the respondent-Department has been conferred the benefits of confirmation in service by way of appointment to the post of MTS, the appellant is entitled to claim the same benefits.

18. The prevailing circulars applicable to the Posts and Telegraphs Department mandate that a temporary employee who has worked in the Department continuously for more than 240 days in the preceding 12 months would be entitled to claim the relief of regularisation under the extant rules and regulations.

19. In view of the foregoing discussion, the impugned orders are set aside. The respondents are directed to treat the appellant at par with Smt. K.M. Vaghela and shall pass the order of regularisation/appointment as MTS in favour of the appellant, on similar terms as was done in the case of Smt. K.M. Vaghela. The order of regularisation will be effective from the date on which, Smt. K.M. Vaghela was appointed as MTS with all consequential benefits. Compliance of this order shall be effected within a period of three months from the date of this order.

20. The appeal stands allowed accordingly.

21. Pending application(s), if any, shall stand disposed of.

.....**J.**
(HIMA KOHLI)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
August 02, 2024