

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 541/1997

Date of Order :

C O R A M

Hon'ble Mrs. Urmita Datta (Sen), Member [Judicial]

Hon'ble Mr. A.E. Ahmad, Member [Administrative]

1. Manoj Kumar Pathak, S/o Sri Gangadhar pathak, LIG, 7/234, K Sector, Hanuman Nagar, Kanker Bagh, Patna-20.
2. Shyam Kishore Mehrotra S/o Late Raj Kishore Mehrotra, resident of Sushil Villa, East Kanulal Road, Mithapur, Patna.
3. Navin Kumar S/o Sri Surendra Kishore Sinha resident of Road No. - 6 C, AAM Bagicha, Mahadeopuri, Gardanibagh, Patna-1.
4. Satya Minakshi S/o Sri Saethchandra Gupta Thakur Bhawan, Opposite new Police Line First Floor, Budh Marg, Patna-1.
5. Sima Sahay S/o Late Janak Nandan Saha-I, C/o Sri S.K. Sinha, Jyoti Kunj, 4/197 People Co-operative Colony, Kankarbagh, Patna-20.
6. Shailesh Jamayar S/o Sri Shiv Narayan Prasad resident of New Jakkanpur Gandhi Patna, Patna-1.
7. Shaida Warsi S/o Late Gulam Warsi resident of Mohalla SCERT Campus, Mahendru, Patna-6.
8. Manju Shriwastawa S/o Sri Braj Bhushan Sinha resident of 3/F 290 N.P.P. Colony, P.O.- Patliputra, Patna-13.
9. Arpana Singh S/o Sri Sandesh Pd. Singh, resident of House No. 38 Sri Krishan Nagar, Patna-1.
10. Madhumati Kumari C/o Mahendra Prasad resident of Ramkrishna Nagar (Rorangpur) P.O., Dhelwa, Lohia Nagar, Patna-20.
11. Poonam C/o Sri Dashrath Kumar Singh resident of Vidya Niwas, Industrial State, Patna.
12. Joginder Singh, Albela Son of Late Nirmal Singh resident of 53-Garand Square Danapur Cant., Patna.
13. Sushma Sinha W/o Sri Sachin Sinha, resident of 75-E Road No. 10, Rajendra Nagar, Patna- 16.
14. Sushma Sinha W/o J.P. Sahai, resident of Patliputra, Patna.

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Applicants.

By Advocate : Shri S.K. Bariar

Vrs.

1. Union of India through the Secretary, Ministry of Information & Broadcasting, Government of India, Shastri Bhawan, New Delhi-110011.
2. Director General, AIR, Akaswani Bhawan, New Delhi-1.
3. Dy. Director General (Administrative), AIR. New Delhi.
4. Director, AIR, Patna.

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Respondents.

By Advocate : Shri R.K. Choubey, ASC

O R D E R

Urmita Datta (Sen), Member [J]: - The instant OA has been remanded back by the Hon'ble Apex Court vide order dated 09.03.2011 in Civil Appeal No. 863 of 2006 and 7566 of 2008. The applicants filed the instant OA praying for the following relief:-

(a) Respondents be directed to regularise the services of applicant immediately against the post of announcer and in the future

vacancies.

(b) Respondents be directed to give the applicants the consequential benefits of such regularisation including arrears of salary or their posts and seniority etc.

(c) That any other relief or reliefs as Hon'ble Tribunal may deem fit and proper.

2. The respondents had also filed their written statement. After hearing both the parties, this Tribunal passed order dated 03.12.1999 with a direction to the respondents to consider the case of the applicants for regularisation and eventual absorption against the regular vacancy in due course in terms of the scheme formulated for regularisation of Casual Production Assistant and General Assistant in the All India Radio pursuant to the judgment of the Principal Bench of the Central Administrative Tribunal in OA No. 822/91 dated 18.09.1992 or alternatively to formulate a scheme for regularisation of the applicants in the light of the scheme formulated by the Department pursuant to the orders passed in OA No. 563/1986 and OA No. 822/81 within a period of four months. Being aggrieved with, the respondents AIR filed appeal before the Hon'ble High Court, Patna and after hearing both the sides, Hon'ble High Court, Patna confirmed the order of the Tribunal. Thereafter, again the respondents of the instant case had filed Civil Appeal No. 863 of 2006 and 7566 of 2008. Hon'ble Apex Court after hearing both sides in both the cases had observed as follows:-

xxxxxxx The respondents herein are announcers/comperes. There is no dispute, whatsoever, that they were engaged on a casual basis. It was specifically contended by the applicants that the respondents were engaged on assignment basis to work only for six days in a month, that is, for 72 days in a year. It was the further contention of the appellants that they were not engaged against any regular vacancy and therefore they were not appointed as regular announcers. It is under those circumstances, the appellants contended that the respondents were not entitled to regularisation on whatsoever basis. The Tribunal, miserably, failed to advert to these crucial aspects of the matter. There is no finding as such recorded by the Tribunal either accepting or rejecting the said contention. This issue, in our considered opinion, decides the fate of this case.

3. In view of the above order, the instant OA was restored. The applicants have filed two supplementary affidavit with annexures to substantiate their case and written statement to supplementary affidavit has been filed by the respondents. According to the directions of Hon'ble Apex Court, we have heard the learned counsel for both the parties and perused the records.

4. The case of the applicants is that they are casual employees of AIR, Patna working against sanctioned and vacant post since 1980 and onwards till date. The post of Announcer-cum-Comperer in AIR is a permanent post. The applicants had been appointed against the regular and sanctioned vacant post since the appointment of Casual Announcer-cum-Comperer is based in the light of Memorandum dated 26.03.1979 (Annexure P/3 to Supplementary Application) of the Govt. of India, Director General, All India Radio, in which it is clearly stated that casual artist shall only be appointed/engaged against sanctioned and vacant post. The panel of Casual Announcer-cum-Comperer shall be reviewed time to time in the light of qualification applicable at that time and the Directorate had issued the letter dated 24.01.1983 in this regard (Annexure P/4 to Supplementary Application). It is stated that the mode of recruitment process and eligibility criteria in this case is exactly similar to the direct recruit/permanent announcers in the AIR. The applicants after passing the written test, audition test and personality test as well as undergoing training with Senior Permanent Announcers and thereafter only they were engaged and performed the duties and responsibilities of Announcer-cum-Comperer. The panel of casual artists should be prepared as per available vacancies and not anticipated vacancy of the Announcer-cum-Comperer of the same year, which is clearly emphasized in para-8 of the Recruitment Rule of Announcer-cum-Comperer. It is submitted by the applicants that as per the report of the Lok Sabha (2009-10) for Empowerment Committee of Women working in Prasar Bharti, it is clearly mentioned in para number 59 that Casual Employees are working against the permanent nature job/post and therefore the Committee had recommended for a policy of regularisation, which should be finalized and put into operation immediately. Thus, it is apparently clear that the Parliamentary Committee had observed that the Casual Employees of AIR are working against the permanent posts. The applicants have further submitted that the Parliament had also observed that limit of 72 days of engagement in a year is again an unfair measure and there should be uniformity and the limit of 72 days in a year should be scrapped forthwith in AIR. In view of the recommendation for scrapping of the limit of 72 days engagement in a year by the Parliamentary Committee, the AIR had scrapped the limit of 72 days engaged in a year or six days in a month and now as per the

letter dated 31.03.2011 (Annexure P/2 to 2nd Supplementary Application), the booking of six days has been enhanced in 29 days in a month. It is reiterated that the fact of working of the applicants against the sanctioned and vacant posts is also apparent from para-4 of letter dated 31.03.2011. It is submitted that now the applicants have been assigned the work as per the letter dated 31.03.2011 and there is no embargo of six days in a month and 72 days in a year. It is stated that the working hours of the applicants is 7 hours 20 minutes like the permanent Announcer-cum-Comparer as it is apparent from the duty chart of the applicants and also the information under RTI Act was given by the office of Director General, AIR, New Delhi vide letter dated 07.09.2012 (Annexure P/5 to 2nd Supplementary Application), in which the Director General had informed that the working period of the Casual Announcer is 7 hours 20 minutes in pursuance of letter dated 14.08.2012 (Annexure P/4 to 2nd Supplementary Application). The applicants have submitted that on 09.06.1992 the Doordarshan had extended the benefits of the earlier scheme for regularisation to its casual artists as per the direction of the CAT in OA 563/1986 in the case of Anil Kumar Mathur and Others. In the extended scheme of 1992, which is based on 08.09.1978 scheme, only the number of days and cut off dates has been changed.

5. The applicants have further submitted that the casual artists of AIR filed a case bearing OA No. 822/1991, praying for the benefits as has been granted in the Anil Kumar Mathur's case. The CAT, Principal Bench, in the said OA, had directed the Ministry of Information and Broadcasting to formulate a regularisation scheme for its casual employee/workers and to implement within time limits stipulated in the judgment dated 14.02.1992, but in pursuance of order passed in OA No. 822 of 1991 (Suresh Sharma and Others vs. UOI & Others), the AIR had only extended the benefits of regularisation to the Casual Production Assistant and Casual General Assistant, which is contrary to the order passed by the CAT, Principal Bench, New Delhi in OA No. 822/1991. It is stated that leaving the Casual Announcer-cum-Comparer out of regularisation scheme is arbitrary and illegal since Casual Production Assistants and Casual General Assistants are being regularised as per the regularisation scheme against completion of 72 working days in a year. It is again submitted that in different cases of AIR, the Principal Bench of CAT had directed regularisation of casual employee of AIR, who have not completed 72 working days in a year. It is submitted that the respondents along with the Secretary, Ministry of Information and Broadcasting has intentionally only kept out the Casual Announcer-cum-Comparer from the benefits of regularisation on the mistaken concept of the overall situation and plea that they were not party in the OA No. 822/1991. Thus the casual announcer could not be provided with the benefits of regularisation from the scheme in spite of the fact that even if the applicants had already completed 72 working days in a year and also they are exactly similarly situated casual employees like Production Assistant and General Assistants and they are booked under the same Contract Sheet, i.e. P-5 of the AIR, thereby giving a complete go by the order passed in OA 822/91 in Suresh Sharma's case. It is submitted that the applicants should be regularised against the vacant post of Announcer-cum-Comparer as there are 9 posts of Announcer and three posts of Comparer are vacant as evident from the letter dated 07.05.2012 of the AIR, Patna.

6. It is also stated that as far back as in the year 1978, Ministry of Information and Broadcasting had formulated a Scheme for regularisation of casual artist, i.e. (i) Announcer (ii) Musician (iii) Assistant Editor (iv) Production Assistant (v) General Assistant of All India Radio. The Department had regularised all casual artists, including announcers, who came under the scheme dated 08.09.1978 (Annexure P/9 to Supplementary Application) and further extended the scheme on 10.07.1981 (Annexure P/10 to Supplementary Affidavit). The extended scheme/revised scheme dated 10.07.81 and 21.08.81 (Annexure P/11 to Supplementary Affidavit) are incorporated in the recruitment rule for the artist of All India Radio. The scheme dated 10.07.1981 and 21.08.1981 is undisputedly applicable for casual artists of All India Radio and as well as Doordarshan. It is submitted that on 09.06.1992, the Doordarshan had extended the benefits of earlier scheme dated 10.07.81, which is based on 08.09.1978 scheme, wherein only the number of days has been modified and framed a new scheme for regularisation of its casual artists as per direction of the CAT in OA No. 563/1986 in the case of Anil Kumar Mathur and Ors . In OA No. 822/1991, the Principal Bench of the Tribunal had directed the Ministry of Information and Broadcasting to formulate a regularisation scheme to all its casual employee/workers and to implement within time limits stipulated in the judgment dated 14.02.1992, but the department had not regularised the service of the applicants as a result of which they filed case for regularisation of service. Thus, it is prayed by the applicants that the department may be directed to regularise them since it is settled by the Hon'ble Supreme Court in the case of K. Ajit Babu and Others Vs. UOI that once the CAT directed and decided the point then other CAT should follow the same. It is further submitted by

the applicants that they have been working in AIR, Patna as casual Announcer-cum-Comparer for the last 18 to 30 years and now they are not eligible for any government service as their age have already been expired.

7. The respondents have filed their written statement as well as supplementary written statement with regard to supplementary affidavit, has been filed. In their written statement, the respondents have stated that the applicants were booked on need basis on the terms and conditions accepted by them. Respondents have denied the claim of the applicant and have stated that as per rules, a Casual Announcer-cum-Comparer can be booked on assignment basis maximum for six days in a month. It is stated by the respondents that though it is true that as per prescribed rules, the candidates who have requisite qualification, interest in the relevant field and applied for same will have to undergo written test, audition test followed by personality test but the rules and regulations for appointment to the regular post of Announcer-cum-Comparer is totally different. Neither prescribed Selection Board for recruiting regular Announcer-cum-Comparer had been constituted nor any roster point for reservation was followed in the case of appointment of Casual Announcer-cum-Comparer, who were engaged on assignment basis as per normal procedure. It is submitted that the decision cited by the applicant cover only for those posts which performs their work behind the camera as is done in the case of Doordarshan, but cannot be done in case of AIR.

8. We have heard both the parties and perused the records as well as written arguments submitted by both the parties as the case has been remanded back by the Hon'ble Apex Court with observation that as per the respondents, the applicants were engaged on assignment basis only for 6 days in a month, i.e. for 72 days in a year as well as they were not engaged against any regular vacancy and therefore they were not appointed as regular announcers and thus they are not entitled for regularisation. Hon'ble Apex Court while remanding back this matter to the Tribunal has observed that in the earlier order the Tribunal neither accepted nor rejected this contention. Thus, presently we have to find out whether the applicants are entitled to the same benefit or not as per the submissions made by the respondents.

9. It is observed that as per the applicants, they were appointed since 1980 onwards against the vacant and sanctioned post in the light of Memorandum dated 26.03.1979 issued by the Govt. of India, Director General, All India Radio wherein it is specifically stated that no Casual Artist will be engaged except against sanctioned post and that also only to meet the urgent programme commitments and requirements which are inescapable. The said Memorandum also stipulates that Head of Stations may initiate action for formulation of different approved panels for casual artists for various categories of posts such as Announcers, Sub-Editors (Scripts), and Instrumentalists etc. which are filled by direct recruitment from the open market, in the normal course, every year between January and April, to be utilised in the course of the year. It is also observed that Para 1, 2 and 7 of the said Memorandum reads as follows:-

1. No Casual Artist will be engaged except against sanctioned post and that also only to meet the urgent programme commitments and requirements which are inescapable. Casual engagements should be resorted to only till regular recruitment has been made which should not in any case take more than six months. Casual engagement for shorter spells may be made only when a regular staff artist has proceeded on long leave.

2. In the case of number of post of Staff Artists the method of recruitment prescribed is that limited selection would be made from eligible specified categories of existing staff artists. In the event of any such new posts being sanctioned or a regular staff artist holding such post, proceeding on long leave and it becoming necessary to fill the vacant post on adhoc basis for short duration, it may be done from amongst the eligible staff artists at the given station and not necessarily on all India basis if the duration of such appointments is going to be short.

7. Casual Artists in the case of direct recruitment and staff artists in the case of limited selection, if it is for occasional engagement, should have the same educational qualifications, experience and age limits etc. as prescribed in the recruitment rules for regular selection. The underlying idea is that sub-qualified persons should not be appointed even on casual basis.

10. The above guidelines have not been specifically denied by the respondents either by filing any counter affidavit or during the hearing.

11. In pursuance to the above direction of the Hon'ble Apex Court, let us first adjudicate the issues mentioned by the

Hon'ble Apex Court in their order and thereafter also to decide whether the applicants are similarly circumstanced with the above mentioned judgment passed by the CAT, Principal Bench. During the course of hearing, the learned counsel for the applicant has also referred to the latest circular of the Department dated 31.03.2011, wherein it is written that number of regular Announcer-cum-Comparer posted at the station should not exceed the sanctioned strength in the particular cadre, which means till today the casual artists are being booked against the sanctioned strength of the particular cadre. It is also admitted fact that appointments of the applicants were made according to the recruitment rule of Announcer-cum-Comparer and through proper advertisement, and from the perusal of abovementioned circular dated 26.03.1979, it is observed that the process of recruitment of regular Announcer-cum-Compere in the AIR is exactly similar. The panel of casuals had been prepared as per available vacancies and not against the anticipated vacancies of the same year, which is clearly emphasized in para-8 of Recruitment Rule of Announcer-cum-Comparer .

12. It is also observed that in the year 1978, the Ministry of Information and Broadcasting had formulated a scheme for regularisation of casual artists, i.e. (i) Announcer , (ii) Musician, (iii) Assistant Editor (iv) Production Assistant (v) General Assistant and the Department had regularised all casual artists including Announcer-cum-Comparer, who came under the scheme dated 08.09.1978 and further extended the scheme on 10.07.1981. The extended scheme/revised scheme dated 10.07.81 and 21.08.81 is incorporated in the Recruitment Rule for the artists of the All India Radio. The scheme dated 10.07.81 and 21.08.81 is also applicable for casual artists of AIR as well as Doordarshan. Thereafter also as per order passed in OA 563/1986 as well as OA 822/1991, the Doordarshan and AIR have formulated a scheme by extending the earlier schemes and have given the benefit to the Production Assistants, who were also similarly situated in the parent circular of 1978.

13. It is also observed that according to the applicants, working hours of the applicants is 7 hours and 20 minutes like permanent Announcer-cum-Comparer Announcer-cum-Comparer and while the casual announcers are getting 6 days assignments in a month on consolidated amount of Rs. 450 to Rs. 600/- per assignment, ignoring the relevant fact that after completion of their assignment, they are allowed only the consolidated remuneration. The applicants have referred the Scheme dated 17.03.1994, para 2 and 3 of which are as follows:-

2. It has been brought to the notice of this Directorate that although these Casual Staff Artists were engaged for 10 days or have been working on 2-3 assignments in a month on a consolidated amount of Rs. 400-500 per assignment, but in actual practice, they have been working 'throughout the month. This aspect has been examined by the Directorate in consultation with the Ministry of I&B and procedure to be followed for arriving at the number of days of casual booking will be as under.

3. The number of days for the purpose of regularisation will be computed on the basis of actual wages given to the Casual Staff Artist has been paid an aggregate sum of Rs. 1500 in a month whether for working for 10 days or for 2-3 assignments in a month and the minimum was prevalent in the State at the relevant time was Rs. 50; the staff artist would be deemed to have worked for 30 days in a month (i.e. Rs. 1500 divided by 50) subject to the condition that the days so computed would not exceed 25 days in a month.

14. As per para-3 of the Revised Scheme dated 17.03.1994 (Annexure P/8 of Supplementary Application), counting of number of days is based on Minimum Wages Act and as per the said para-3 the applicants are working not less than 22 days in a month for six assignments. Now the counting of number is based on para-3 of the Revised Scheme dated 17.03.1994 (Annexure P/8 of Supplementary Application), which has been confirmed by the Hon'ble Apex Court. It is also observed that in the scheme framed by the AIR for Production Assistant, General Assistant, General Assistant and Transmission Executive as per direction dated 18.09.92 in the case of Suresh Sharma in OA No. 822 of 1991, where 72 days assignment is fixed for AIR in consultation with Ministry of I&B for the regularisation of casual artist of AIR and this fact was considered by the CAT, Principal Bench in Suresh Sharma's case. In pursuance of that order AIR had only extended the benefits of regularisation to the Casual Production Assistant and Casual General Assistant, which is contrary to the order passed by the order passed in the Suresh Sharma's case. According to the respondents, they are denying the same benefit on the ground that the applicants were not party in the said application. It is also observed that in para-9 of the said order, after considering the earlier judgment passed by the CAT, Principal Bench as well as scheme formulated by the Ministry of Information and Broadcasting, the Tribunal has ordered that

We respectfully reiterate the same view. Accordingly, the present application together with the MPs filed thereunder are disposed

of with the direction to the respondents that the case of the applicants should also be considered in accordance with the scheme to be formulated and implemented by the respondents for regularisation of all the casual workers within the time limit stipulated in the above mentioned judgment dated 14.02.1992.

15. Thus, when there is a general order for formulation of scheme for all casual workers, which also includes the present applicants, i.e. Announcer-cum-Comparer, who are similarly circumstanced with the Production Assistants and others as all of them were appointed on daily rated basis and by same Contract Sheet, i.e. P-5 for 72 days, which is not denied by the respondents. Thus, they cannot discriminate the similarly circumstanced persons on the ground that they were casual artists as the Production Assistants and General Assistants were also casual artists as per the rules and schemes of the Department. It is noted that after being appointed on the same Contract Sheet, i.e. P-5 format of the AIR, the Production Assistants and General Assistants are being regularised after completion of 72 days assignment in a year whereas, the applicants i.e. Announcer-cum-Comparer are denied to be regularised in spite of the fact that they were engaged on the same Contract Sheet P-5 format of the AIR and completed 72 days assignment in a year. Moreover, not only AIR but also Doordarshan had also regularised their casual artists of different posts who were engaged against Contract Sheet of P-5 format.

16. Thus, we are not convinced with the plea of the respondents that the applicants are not entitled for regularisation since they were engaged on assignment basis of working only for 6 days in a month, i.e. 72 days in a year. In our view, the respondents are taking different grounds at different time for denying the benefit of regularisation of the scheme. In one hand, they have submitted that applicants are not entitled to get the benefit of order passed in OA 822/1991 as they are not the parties, on the other hand they are saying that the applicants are not eligible as they were engaged for 72 days in a year, but in the contrary they have formulated a scheme or rather extended the earlier schemes for the Production Assistants and General Assistants who were also engaged for 72 days in a year under the Contract Sheet of P-5 format. Thus, in all the cases the casual artists were engaged on daily rated basis through the Contract Sheet (P-5 format) and while giving benefit to some sets of posts and denying the same to the others is a clear demonstration of discrimination and arbitrariness on the part of the respondents.

17. Moreover, it is observed that the respondents, who have further formulated or extended the earlier scheme to the Production Assistants in pursuance of the direction given by the CAT, Principal Bench in OA 822/1991, wherein there is a clear direction to formulate a scheme for all casual artists, which includes the applicants (Announcer-cum-Comparer) as well as Production Assistants and Assistant Editors etc. It is further observed that in 1978 circular, which is the parent circular for regularisation, a scheme was made for regularisation of Announcer-cum-Comparer, Assistant Auditor as well as the Production Assistant and Newsreaders etc. Thus the plea of the respondents that they are not similarly circumstanced is not tenable and acceptable to us as the nature of appointment and hours of duty are all the same with the employees who were given the benefit of the earlier scheme dated 26.03.1979 which has also not been denied by the respondents, in our view the applicants are entitled to be regularised as per the scheme formulated by the Ministry of Information and Broadcasting.

18. In our opinion, the contention of the respondents that the applicants are not engaged against the sanctioned and vacant post is also not tenable as the applicants were admittedly selected through proper notification and after going through the written examination, interview and training in a similar process required for regular Announcer -cum- Comparer in view of the Circular dated 26.03.1979 . In view of the above, the contention of the respondents that the applicants are not entitled for regularisation and subsequent absorption as they have only worked for 72 hours in a year and they are not engaged against regular vacancy is not tenable or acceptable to us and in our opinion the applicants are entitled to be considered for regularisation and subsequent absorption being similarly circumstances with the persons who got benefit under the different schemes made either as per direction of this Tribunal in OA No. 822/1991 or their own scheme formulated earlier.

19. In view of the aforesaid discussions of the factual and legal aspect of the matter, we are of the opinion that the case of the applicants is also squarely covered by the judgment passed by the Hon'ble Apex Court in the case of State of Karnataka Vs. Uma Devi reported in 2006(4) SCC 1 as well as State of Karnataka & Ors. Vs. M.L. Kesari & Ors. Reported in (2010) 2SCC(L&S) 824, wherein the issue of regularisation of casual labour was dealt with. Hon'ble Apex Court in the matter of State of Karnataka & Ors. Vs. M.L. Kesari & Ors has held as under:-

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5. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily for more than ten years .

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the applicants will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one time measure. Umadevi directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.04.2006).

6. The term 'one time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

8. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc /casual for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.04.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in

Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure.

9. These appeals have been pending for more than four years after the decision in Umadevi. The appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularisation within six months of the decision in Umadevi or thereafter.

10. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one time regularisation exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts. This appeal is disposed of accordingly.

20. In the instant case also, the applicants were appointed against the proper notification after passing successfully in the written examination, interview as well as training and were appointed against the sanctioned post as per the circular dated 26.03.1979 on daily rated basis and worked almost 22 days in a month. It is noted that the contention of the respondents is that the applicants are not on the same footing with the regular employees as because neither prescribed Selection Board for recruiting regular Announcer/Compere had been constituted nor any roster point for reservation was followed in the case of appointment of Announcer/Compere, who were engaged on assignment basis as per normal procedure. But we are not convinced with the said contention of the respondents as admittedly the applicants were appointed against different notifications and after following proper procedure, and the question of roster point will come in case of permanent appointment and since admittedly they were appointed on daily rated basis as casual artists, obviously the question of roster point will not come, and thus, the ground for rejection on this count is not tenable. Moreover, as per the above mentioned judgment, i.e. in the cases of Uma Devi and M.L. Kesari (supra), the applicants were admittedly appointed and are working since 1980 and onwards continuously without any intervention of any court and as observed above, as their appointment was also against the sanctioned post and after due process, the benefit of regularisation as per the law settled by the Hon'ble Apex court in the cases of Uma Devi and M.L. Kesari (supra) cannot be denied to the applicants. In the present case also the case was filed in the year 1997 and it has gone upto the Hon'ble Apex Court and thereafter it has been remanded back to this Tribunal. Hence, the applicants are entitled to get the benefit of regularisation and subsequent absorption.

21. From the above observations, the findings arrived by us are as follows:-

(i)The applicants were appointed against the proper notification after passing successfully in the written examination, interview as well as training and were appointed against the sanctioned post as per the circular dated 26.03.1979 on daily rated basis.

(ii)They were appointed against sanctioned vacant post as per circular dated 26.03.1979.

(iii)With regard to working of 6 days in a month or 72 days in a year it is observed that as per para 3 of the Revised Scheme dated 17.03.1994 (Annexure P/8 to Supplementary Application), counting of number of days is based on Minimum Wages Act and as per the said para-3 the applicants are working not less than 22 days in a month for six assignments which has been confirmed by the Hon'ble Apex Court. The Doordarshan and AIR have also regularised their casual artists on the basis of the said OM dated 17.03.1994. In actual practice, the applicants have worked throughout the year. Thus, the plea of working of 72 days is not sustainable.

(iv)As the applicants are exactly similarly circumstanced with regard to their procedure of appointment as well as nature of appointment with the applicants of OA No. 563/1986 and OA No. 822/1991 they cannot be discriminated only on the ground of not

being a party to the said cases.

(v)The case of the present applicants are squarely covered by the judgment of the Hon'ble Apex Court passed in the case of Uma Devi and M.L. Kesari (supra) for the purpose of regularisation and subsequent absorption of the applicants.

22. In view of our observations made in para 8 to 20 above and our findings arrived at para 21 above , we, accordingly, direct the respondents to consider the case of the applicants for regularisation and eventual absorption against the regular vacancy in due course in terms of the scheme formulated for regularisation of Casual Production Assistant and General Assistants in the AIR pursuant to the judgment of the Principal Bench of the CAT in OA No. 822/1991 dated 18.09.1992 or alternatively to formulate a scheme for regularisation of the eligible applicants in the light of the scheme already formulated by the said Department pursuant to the order passed in OA No. 563/1986 and OA No. 822/1991 within a period of four months from the date of receipt of a copy of this order.

23. The OA is disposed of accordingly with above directions with no order as to costs.

[A. E. Ahmad]

Member[J]

srk.

[Urmita Datta(Sen)]

Member[A]