

**URGENT
COURT MATTER
SPEED POST**

F.No.C-30014/41/2015-V&L
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 23rd November, 2015

To

All the Pr. Chief Commissioners of Income Tax (CCA)
All the Pr. Directors General of Income Tax.

Sub: Filing of further appeals in Higher Courts on the issues related to Casual Labours-Reg.-

Sir,

I am directed to request you to refer to this office letter dated 16.10.2015 on the subject cited above.

2. In this connection I am directed to state that the issue of absorption of Casual Labour in the cadre of MTS is under examination and therefore for the time being, Para 3.2. and following part of Para 3.4 of the above mentioned letter dated 16.10.2015 may be treated as deleted.

Part of Para 3.4 to be treated as deleted for the time being :

"Further, it may also be brought to the notice of the Courts that:

(i) *These casual labours may have to be laid off as & when regular recruitment is made.*

(ii) *These casual labours cannot be regularized as they do not fulfill criteria laid down in the judgment of the Constitutional Bench in the case of Uma Devi. It would be in their interest to be engaged through contract agencies so that they have safety under labour laws as long as their services are required by the Department."*

3. I am further directed to state that the draft proforma of the certificate to be issued by the Supervisory Officer as mentioned as Annexure-A in Para 3.5 of above referred letter dated 16.10.2015 is modified as under:

"Annexure-A

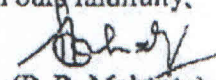
CERTIFICATE

It is certified that (--- Name of the person---) working as Casual Labour since (--- date ---) has been assigned the same nature of work akin to the nature of work which is generally assigned to a regular employee namely (name of post and work assigned) for the purpose of payment of wages, in terms of DoPT's OM dated 07.06.1988.

Seal and Signature of
Supervisory Officer"

4. In view of above, the letter issued vide F.No. C-30014/41/2015-V&L dated 16.10.2015 stands modified to the extent mentioned above.

Yours faithfully,


(P. R. Mohanty)
DCIT (OSD)(V&L)
C.B.D.T.

F.No.C-30014/41/2015-V&L
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 16th October, 2015

To

All the Pr. Chief Commissioners of Income Tax (CCA)
All the Pr. Directors General of Income Tax.

Sub: Filing of further appeals in Higher Courts on the issues related to Casual Labours-Reg.-

Sir,

I am directed to request you to refer to the subject cited above.

2. On perusal of different OAs and Orders of various Courts related to above matter, it was found that following issues are involved:

- i) Regularization in accordance with Apex Court decision in Uma Devi 2006(4) SCC 1.
- ii) Absorption of Casual Labour in MTS cadre.
- iii) Litigation on the issue of CBDT's letters dated 04.07.2011 and 09/13.05.2013.
- iv) Litigation on re-engaging Casual Labour through Contractors/Placement Agencies.
- v) Entitlement of Casual Labour to 1/30th of pay in relevant pay scale w.e.f. 01.01.2008

3. On the issues mentioned above, I am directed to state that the Competent Authority has approved following course of action:-

3.1 Regularisation in accordance with Apex Court decision in Uma Devi case 2006 (4) SCC 1

On this issue, it has been observed that in almost all the decisions, Hon'ble CAT / Courts have directed the respondents to consider the regularization of the applicants in accordance with the decision in Uma Devi Case. The Constitutional Bench of the Supreme Court unequivocally declared in para 44 of its judgment as under :

"there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

The Bench did allow one time regularization of those working for more than 10 years subject to fulfillment of following conditions as on the date of judgment i.e. the 10th April, 2006 :

- a) They were engaged against a regular vacancy.
- b) They have worked for 10 years or more as on 10.04.2006 in duly sanctioned post but not under cover of orders of Court/Tribunals.
- c) They are qualified in term of Statutory Recruitment Rules for the post in terms of Educational qualifications.
- d) They were engaged as Casual Employee through Employment Exchange.

Considering the judgment of the Constitutional Bench in the Uma Devi case & OMs of DoPT, the following course of action is to be followed:

- (i) In case, the exercise of one-time regularization, as mandated by the DoPT OM dated 11.12.2006, has not been carried out, then the Pr. CCIT may determine fulfillment of all conditions laid down therein & proceed to implement the mandate. It may be noted that the regularization is not an ongoing process. If it was done earlier in terms of the aforesaid OM, then the same cannot be done again.
- (ii) In such cases where CAT / High Court has / have directed consideration for regularization, a detailed order, specifying factual matrix of each case, particularly whether or not the casual engagement against a regular vacancy was made by the competent authority and conditions laid down in the DoPT OM dated 11.12.2006 were fulfilled or not, should be passed. The order should also refer to the operative sentence of judgment of the Constitutional Bench in Uma Devi case as under :
"there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."
- (iii) The orders of the Central Administrative Tribunals / judgments of High Courts directing regularization should be contested in appellate Courts by placing reliance on the Constitutional Bench Judgment in the case of Uma Devi (supra).

3.2 Absorption of Casual Labour in cadre of MTS

The fundamental issue is whether absorption of casual labour is possible in light of the judgment of the Constitutional Bench in the case of Uma Devi. The recruitment to MTS cadre is to be made through SSC as per the Recruitment Rules. It will not be possible to absorb Casual Labour in MTS cadre in view of Uma Devi decision. The field authorities may decide the issue accordingly if required to do so by any court order. In case the CAT/Court has directed absorption of casual labour in MTS cadre, then such orders must be appealed against forthwith.

It should be withdrawn

3.3 Litigation on the issue of the CBDT's letters dtd. 04.07.2011 & 09/13.05.2013.

In the aforesaid letters there was a direction to CCsIT and DGsIT that they should ensure that none of the DDOs make any payment to the directly deployed casual worker. The said letters were challenged in number of cases all over the country. These letters were quashed and set aside by Hon. CAT in several cases including the case of Udayanand Thakur in OA No.2012/2013 in CAT, PB, Delhi. It is felt the wages have to be paid for the services of the casual labour availed. Therefore, no further appeal may be filed on this issue.

As per Judgement of Principal Bench CAT N.Delhi the above mentioned letter is withdrawn should be

3.4 Litigation on re-engaging Casual Labour through Contractors/ Placement Agency

On the issue whether casual labour already working for several years can be re-engaged through contractors/ placement agency, if required, the Principal Bench of the Central Administrative Tribunal has held that it is not permissible to do so in the case of Udayanand Thakur & Ors.

It should be mentioned in column no. 3.3.

However, the policy of outsourcing of services like data entry/ typing/cleaning/security on contract without employing casual workers individually was challenged in the Jabalpur Bench of the Hon'ble CAT in the case of Sh Laxmi Prasad Dubey, but the same was dismissed. Further challenge in the High Court failed. Even the Hon'ble Supreme Court dismissed the Special Leave Petition filed against this judgment of the High Court.

It should be withdrawn

Therefore, all orders of the Tribunal quashing the scheme of outsourcing of services on contract should be contested, as the method of engaging is the sovereign right of the Government. Reliance should be placed on the Judgment of the Hon'ble M.P. High Court in the case of Sh. Laxmi Prasad Dubey, upheld by the Apex Court. Hon'ble High Court has clearly stated that "the petitioners have no right to stop the respondents from outsourcing their certain services in the interest of economy and efficiency".

Further, it may also be brought to the notice of the Courts that:

- (i) These casual labours may have to be laid off as & when regular recruitment is made.
- (ii) These casual labours cannot be regularized as they do not fulfill criteria laid down in the judgment of the Constitutional Bench in the case of Uma Devi. It would be in their interest to be engaged through contract agencies so that they have safety under labour laws as long as their services are required by the Department.

3.5 Issue of entitlement of Casual Labour to 1/30th of pay in relevant pay scale w.e.f 01.07.2008

In several cases, the issue was of entitlement of wages equal to 1/30th of the pay in relevant pay scale w.e.f. 01.07.2008 and applicability of the pay as per 6th CPC has been raised.

The DoPT OM dated 07.06.1988 speaks about the nature of work entrusted to Casual Workers and that where the nature of their work is same as that of Regular Employees, then the casual workers may be paid at the 1/30th of the pay at the minimum of the relevant pay scale. This OM does not differentiate between a Casual Labour with Temporary status and Casual Labour without Temporary status (CL-TS). However the OM dated 23.01.2012, only regulates the wages of Casual Labour with Temporary status wherein it is stated that CL-TS should be paid wages based on pre-revised S-I scale as on 01.01.2006 i.e. in 6th Pay Commission in PB-I with GP-1800/- w.e.f. 01.01.2006.

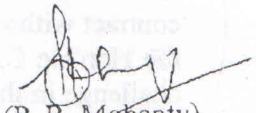
In this connection, I am directed to state that if the supervisory officers certify that the particular casual labour is doing same nature of work as assigned to the regular employee, then such casual labour be paid wages equal to 1/30th of the pay at the minimum of the scale admissible to such employees in light of the DoPT's OM dated 07.06.1988. A draft proforma of the certificate to be issued by the Supervisory Officer is given at the end of this letter marked as Annexure-A.

However if the casual labour is not assigned same nature of work as assigned to regular employee, then order of the CAT/High Court directing payment of daily wages @

1/30th of the lowest of the scale of Group D should be contested in higher Courts.

4. In view of the above, I am directed to request you to examine, the orders of CAT/High Court in the light of the above facts and a decision on filing of further appeal on issues mentioned above may be taken by the concerned Office. An action taken report in this regard may also be sent immediately.

Yours faithfully,


(P. R. Mohanty)
DCIT (OSD)(V&L)
C.B.D.T

Annexure-A

CERTIFICATE

It is certified that (--- Name of the person---) working as Casual Labour since (--- date ---) has been assigned the same nature of work, which has been assigned to a regular employee namely (---Name of the regular employee---) for the purpose of payment of wages, in terms of DoPT's OM dated 07.06.1988.

Seal and Signature of
Supervisory Officer