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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 458/2002

New Delhi, this the 18th day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Chander Bhan Singh
S/o Shri Vijay Pal Singh
R/o Nangla Tikona
Ram Ghat Road, Aligarh

... Applicant

(By Shri S.K. Gupta, Advocate)

vs.

1. Union of India through Secretary
Ministry of Finance
North Block, New Delhi
2. Chief Commissioner
Income Tax Office
Aya Kar Bhawan, Meerut
3. Commissioner
Income Tax Office
Marris Road, Aligarh
4. Deputy Commissioner (Administration)
Income Tax Office
Marris Road, Aligarh.

... Respondents

(By Shri V.P. Uppal, Advocate)

O R D E R

Justice V.S. Aggarwal:

Applicant, was born on 10.7.1978. He contends that he had enrolled himself with the Employment Exchange at Aligarh in the year 1994. He was engaged as casual labour to work as Chowkidar and he had completed 206 days as on 22.7.1995. He continuously worked as Chowkidar on casual basis. His grievance is that his juniors had been appointed to work as daily wagers. Despite the applicant having worked for all these years, he had

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not been awarded temporary status. By virtue of the present application, he claims that he should be granted temporary status in accordance with the Govt. of India Scheme of 10.9.1993 or in the alternative, he prays that he should be considered for regularisation in terms of the Govt. of India Scheme of 23.8.1988.

2. The application has been contested. As per the respondents, the applicant is not covered by the scheme of 1993, nor is he covered by any other scheme for regularisation. The applicant was employed purely on casual basis with regular breaks. He was employed as and when the work was available. The respondents contend that they are not aware about his date of birth but his case was not sponsored by the Employment Exchange. Furthermore, it is pleaded that the scheme of 10.9.1993 is not an ongoing scheme. Since the name of the applicant was not sponsored by the Employment Exchange, his case even cannot be considered for regularisation or for temporary status.

3. During the course of submissions, the controversy that arose was as to whether:-

- i) it is necessary that the name of the

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concerned person must be sponsored by the Employment Exchange before he can be considered for regularisation; and

ii) the applicant can take advantage of the scheme of the year 1988 or not.

So far as the latter argument is concerned, the learned counsel for the applicant had strongly relied on the decisions of Hon'ble Single Bench of this Tribunal in the case of **Ashok Kumar and others v. Union of India and others** in OA-104/2002 rendered on 29.1.2003 and in the case of **Shri Sripal and others v. Union of India and others** in OA-19/2003 rendered on 3.7.2003. The respondents' learned counsel questions the correctness of the same contending that there is difference of one word "engagement" that occurs in the Scheme of 1988 and "temporary status" that occurs in the Scheme of 1993.

4. For the purpose of the present application, we are not expressing ourselves on this controversy because it is first between the parties that would clinch the dispute.

5. Reliance was strongly placed on the Scheme of the year of 1988 referred to above by the learned counsel for the applicant to contend that

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the applicant had continuously worked for the period contemplated and, therefore, he is entitled to claim regularisation. The snag, however, is that after the Office Memorandum No.49014/19/84-Estt. (C) dated 26.10.1984, the appointment of casual labourers to Group 'D' posts is required to be made with the following conditions:-

"(i) No casual labourer not registered with the Employment Exchange should be appointed to posts borne on the regular establishment;

(ii) Casual labourers appointed through Employment Exchange and possessing experience of a minimum of two years' continuous service as casual labour in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment in that office/establishment without any further reference to the Employment Exchange.

(iii) Casual labourers recruited in an office/establishment direct, without reference to the Employment Exchange, should not be considered for appointment to regular establishment unless they get themselves registered with the Employment Exchange, render, from the date of such registration, a minimum of two years' continuous service as casual labour, and are subsequently sponsored by the Employment Exchange in accordance with their position in the register of the Exchange (See paragraph 3 below for one time relaxation)."

It clearly shows that one of the condition imposed is that a casual labourer should be recruited on being sponsored from the Employment Exchange and should not be considered for regular establishments

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unless he gets himself registered with the Employment Exchange besides other conditions.

6. The learned counsel for the applicant referred us to a Bench decision of this Tribunal in the case of **Shri Shanti Parshad and Ors. v. Union of India and Others**, in OA No.783/1999 rendered on 3.2.2000. Perusal of the decision referred to clearly shows that the applicants therein were engaged as casual labour malis in the respondents organisation and continued to work ever since. They were granted temporary status, but the said status was withdrawn subsequently in the light of the Office Memorandum dated 12.7.1994 in which it was clarified that it is mandatory to engage casual employees through the Employment Exchange. The application was allowed. The abovesaid clearly reveals that it was a fact where the status so granted was withdrawn. It is not the case herein. The case of Shanti Parshad (supra) must be held to be distinguishable.

7. More close the facts of the present case is the decision rendered by this Tribunal in the case of **Satish Kumar and Ors. v. Union of India & Ors.** in OA No.1944/2001 on 10.12.2001. Therein also, the concerned persons were seeking temporary status in accordance with Office Memorandum of the Department of Personnel and Training dated

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10.9.1993. The decision of the Supreme Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. vs. K.B.N. Visweshwara Rao and Ors., (1996) 6 SCC 216 was also considered. The argument was rejected and it was held that it would be necessary that the concerned person should be sponsored by the Employment Exchange. The findings read:-

" 8. For the same reasons, as are recorded above, I am also not convinced that the judgement rendered by this Tribunal on 3.2.2000 in OA-83/99 also relied upon by the learned proxy counsel for the applicant will find application in the facts and circumstances of the present case. In the aforesaid judgement of this Tribunal, I find that reliance has been placed not only on the judgement rendered by the Supreme Court in Malkapatnam's case (supra) but also on a certain judgement rendered by the Delhi High Court on 22.10.1990 in Kehar Singh Vs. Electronic Corporation of India & Ors., reported in 43 (1991) Delhi Law times (SN) 13. It could appear that in that particular case, the petitioner had worked satisfactorily as a Helper for some time. The Delhi High Court had in the facts and circumstances of that case held that the rejection of the petitioner's prayer for regularization merely because his name had not been sponsored through the Employment Exchange was not proper. On consideration, I find that the aforesaid case was not the one relating to conferment of temporary status. In fact, the DOPT's Scheme in question itself came into force only on 10.9.1993, i.e., much after the aforesaid decision was rendered by the Delhi High Court on 22.10.1990. The other relevant facts and circumstances of that case are also not available in the copy of the judgement of the Tribunal dated 3.2.2000 supplied by the learned counsel. In the circumstances, placing of reliance on the aforesaid decision of the High Court will also not assist the applicants."

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8. Some feeble attempt had been made that such a condition cannot be imposed that a person's name must be sponsored by the Employment Exchange. This particular plea does not require much discussion because in the case of **State of Haryana & Ors. etc. etc. v. Piara Singh and Others etc. etc.**, 1992(3) AISLJ 34, the Supreme Court held that the requirement that employees sponsored by the Employment Exchange only should be regularised was a reasonable and wholesome requirement designed to check and discourage back door entry and irregular appointment.

9. More recently in the case of **Surendra Kumar Sharma v. Vikas Adhikari & Anr.**, 2003 (1) SCSLJ 493, the same controversy had been considered and with respect to the names to be sponsored by the Employment Exchange, the Supreme Court held that the Employment Exchange cannot be ignored. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations. The findings read:-

"Although there is the Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given

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directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 140 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed, resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 days or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts."

In other words, if such a condition is imposed that the name must be sponsored by the Employment Exchange, the same cannot be termed to be arbitrary, unjust or illegal. We accordingly hold that the instructions referred to above cannot be declared to be illegal and it was necessary that the name of the concerned person should be sponsored by the Employment Exchange.

10. In the present case before us, the applicant as per his own admission was born on

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10. 7. 1978. He was engaged as casual labourer in 1994. He must have admittedly been 16 years of age. He further pleaded that he was enrolled with the Employment Exchange. No such Employment Exchange enrollment has been produced. We hold that he ~~could~~ ^{had} not have been enrolled at such a young age and, therefore, he cannot claim that he should be given temporary status or regularisation in the alternative.

11. No other argument was advanced.

12. Therefore, on this short ground, the application must fail and is dismissed. No costs.

R. K. Upadhyaya

(R. K. Upadhyaya)
Member (A)

V. S. Aggarwal

(V. S. Aggarwal)
Chairman

/sns/