

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1979/2002

Date of decision: 09.7.2003

Joginder & Others

..

Applicants

(By Advocates: Sh.. A.K.Sinha)

versus

Union of India & Others

..

Respondents

(By Advocates: Sh. M.K.Bhardwaj, through Sh.A.K.Bhardwaj)

CORAM:

Hon'ble Sh. Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?

S. Raju
(Shanker Raju)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A.No.1979/2002

Hon^{ble} Shri Shanker Raju, Member(J)

New Delhi, this the 9th day of July, 2003

1. Joginder s/o Sh. Ramgati, SE-III
2. Parvinder s/o Hari Chand, Dir(North)-
3. R.N.Mishra s/o Sh. R.S. Mishra MOS's Office
4. Harish s/o Sh. Anand Lal DB(SB) Sec.
5. R.N.Mishra s/o B.N.Mishra SAARC Div.
6. Jaibir s/o Sh. Bhane Ram IPA Div.
7. Arvind Kumar Tiwari s/o Sh. R.K.Tiwari-Diir (J&K)
8. Ashok Kumar s/o Sh. Prabhu Nath Dir.(Fin)
9. Mohd. Talib s/o Sh. Mohd. Shamim CR(SB)
10. Nav Kumar Devy s/o Sh. S.C.Dey SE-III
11. Vipin Rai s/o Sh. R.A. Rai OSD(PR)
12. Ravinder Nath s/o Sh. H.P.Pandey JS(Affr.)'s Office
13. Satpal Singh Rawat s/o Sh. G.S.Rawat JS (ED)'s Office
14. Narender Singh s/o Sh. Rai Singh U.S.(PV-II)
15. Ashwani Kumar s/o Sh. Kartar Singh R&M Sec.
16. Ashok Kumar Chauhan s/o Sh. Jiut Chauhan-Res.Sec(PH)
17. Trilik Chand s/o Sh. Murari Lal ITEC Cell
18. Pawan Kumar s/o Sh. Raghubir Singh CR(SB)
19. Jagdish Prasad s/o Sh. N.Prasad ESO
20. Anil Kumar s/o Sh. Om Prakash ESO
21. Vijay Kumar s/o Sh. Nathi Ram ESO
22. Vijay Kumar Pant s/o Sh. H..D.Pant Computer Cell(SB)
23. Suresh Kumar s/o Sh. Baru Ram ODS Cell
24. Smt. Poongarhi ESO
25. Virender Narayan MEA Canteen
26. Raj Kumar MEA Canteen
27. Ganesh s/o Sh. Gopal MEA Canteen
- h 28. Kama Singh s/o Sh. Madia MEA Canteen

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29. Madan Gopal Singh
s/o Sh. Dev Muni Sah

MEA Canteen

30. Smt. Geeta Devi

MEA Canteen

(All the applicants are working in the
Ministry of External Affairs(P.E.Section). Applicants

(By Advocate: Sh. A.K.Sinha)

Vs.

1. Union of India through
The Secretary
Ministry of External Affairs
Govt. of India
New Delhi.

2. The Under Secretary (P.E..)
Ministry of External Affairs
Govt. of India
New Delhi.

... Respondents

(By Advocate: Sh. M.K.Bhardwaj, through Sh. A.K.
Bhardwaj)

O R D E R

By Shri Shanker Raju, M(J):

Applicants, who are working as Casual
Labourers, have sought regularisation with all
consequential benefits.

2. Applicants, 30 in number, after being
sponsored through Employment Exchange on the basis of
an interview and also a test, were selected for
engagement as casual labourers on 12.10.1994 and some
of them in the year 1995 in the Ministry of External
Affairs.

3. In accordance with the DoPT's Scheme of
10.9.1993, as envisage, accord of temporary status to
casual labourers who had completed 206/240 days and
further regularisation, represented to the respondents
for consideration under the DoPT's Scheme above.

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4. As nothing was heard from the respondents, applicants filed OA 289/2000 wherein by an order dated 14.12.2000 on the agreement between parties, directions have been issued to the respondents to consider the case of the applicants for grant of temporary status in accordance with Scheme of DoPT of 10.9.1993 within a period of three months.

5. By an order dated 11.4.2001, as the applicants were engaged after 1.9.1993 and the Scheme has been declared as onetime measure, respondents rejected the claim for grant of temporary status to applicants, giving rise to the present OA.

6. Shri A..K.Sinha, learned counsel for the applicants contends that applicants were selected for engagement on casual basis after sponsored through Employment Exchange, and were subjected to test and interview, and were being paid at a rate minimum of the basic pay and DA as well as annual allowances. From January, 1998 onwards, their HRA, CCA and Bonus have been stopped without any notice.

7. By referring to the decision of Apex Court in State of Haryana v. Piara Singh, 1992(2) ATC 403 a presumption arises that there is a regular need for services on continuation of casual labourer for a fairly long spell, i.e., 8 to 9 years in case of applicants.

8. Shri Sinha contends that this Tribunal in Shri Sarjuk Prasad & Anr. v. Union of India & Anr., OA 2129/1996, decided on 25.2.1997 held the DoPT's

Scheme dated 10.9.1993 as an ongoing and directions have been issued to confer the applicants therein the benefit of the Scheme. The aforesaid decision was carried before the Apex Court and in CA Nos.504-505/1998 decided on 9.8.2000 directions of the Tribunal have been affirmed. Referring to the above, it is stated that the decision of the Apex Court in Union of India & Anr. v. Mohan Pal & Anr., 2002(4) Scale 216 is per incurium of the decision in Sarjuk Prasad's case.

9. Shri Sinha, further by referring to Para 11 of the decision in Mohan Pal's case supra, contended that the casual labourers who had rendered service for more than one year and were not accorded temporary status pursuant to the directions of the Court, their cases have not been interfered as such for them the Scheme is not onetime measure and they are exceptions to the decision along with those on whom temporary status has already been conferred.

10. Alternate argument of the applicant is taking resort to order passed, in CP 160/2002 in OA 289/2000 (Joginder & Others v. Union of India, on 19.7.2002 contending that therein a right has been accorded to the applicants and in view of the DoPT's Scheme of 7.6.1988, having completed 204/240 days in two consecutive years and on having been sponsored through Employment Exchange, applicants have a right to be regularised against Group "D" posts and absorbed accordingly.

11. Shri Sinha states that rejection of the request is arbitrary and discriminatory and those who were appointed in the year 1995 have already been accorded temporary status.

12. On the other hand, respondents' counsel Shri M.K.Bhardwaj, through Sh. A.K.Bhardwaj, contends that the Scheme of the DoPT has been held to be one time measure. Accordingly, on consideration, as the applicants have been found to be engaged only in the year 1994, and were not in engagement on 1.9.1993, they are not amenable to the Scheme.

13. In so far as Sarjuk Prasad's case supra is concerned, it is contended that both the orders having equal strength of Bench, the latter decision prevails.

14. By referring to the Mohan Pal's case supra, it is contended that the Scheme has been observed to be one time measure, with an exception to those casual labourers who have been suo moto accorded temporary status on the assumption of ongoing Scheme, their temporary status has been observed not to be stripped off. However, it is contended that on a literal construction and interpretation of Para 11 of the Mohan Pal's case supra which is limited to the cases before the Apex Court even in cases where after orders by the Court, temporary status have not been given, their cases were not interfered at a distance of time. However, it is stated that the Scheme which has been observed ongoing, shall relate back to its promulgation i.e., 1.9.1993.

15. Sh. A.K..Bhardwaj referring to the decision of a High Court of Delhi in CWP No.1448/2002 in Union of India & Ors. v. Shri Manoj & Another, decided on 10.5.2002, contended that the decision of the Tribunal has been over turned, and being ongoing Scheme, the decision in Mohan Pal's case supra was applied.

16. In so far as Para 11 of the Mohan Pal's case supra is concerned, by referring to the Review Application No.6886/2002 in CWP No.1447/2002 with reference to Para 11 of the Judgement passed by the Apex Court in Mohan Pal's case supra what has been observed by the High Court in its order dated 26.7.2002 is that the only exception to the decision in Mohan Pal's case supra is that those casual labourers who had been granted temporary status suo moto in terms of the Scheme assuming that the Scheme is ongoing but it does not envisage grant of temporary status on the directions of the Tribunal.

17. In so far as Applicants' alternate argument of regularisation under the DoPT's Scheme dated 7.6.1988, it is contended that the applicants being daily wagers, in contingent establishment, have no right to be regularised. He relies upon the decision of the Apex Court in State of U.P. & Ors. v. Ajay Kumar, JT 1997(3) SC 219 as well as State of U.P. & Others v. U.P. Madhyamik Shiksha Parishad Shramik Sangh & Another, 1996(7) SCC 34 to substantiate his contentions.

18. However, it is stated that regularisation would depend upon the availability of vacancies in Group "D" posts. It is also stated that the applicants are continuing due to availability of work.

19. Applicants in their rejoinder have reiterated their pleas taken in the OA.

20. I have carefully considered the rival contentions of the parties and perused the material on record.

21. Earlier, the view taken by the Tribunal in case of Sarjuk Prasad's case supra as to the applicability of Scheme, was that the Scheme is ongoing and even if a casual worker completes, 206/240 days in a year after 1.9.1993 was to be conferred temporary status.

22. The aforesaid decision was affirmed by the Apex Court in C.A.No.504-505/1998 on 9.8.2000. However, the issue regarding applicability of Scheme, was meticulously gone into by the Apex Court in Mohan Pal's case supra and in so far as, whether it is ongoing or not, the following observations have been made.:

"6. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an on-going Scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary"

status. We do not think that clause 4 of the Scheme envisages it as an on-going Scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guide-lines to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group "D" posts."

23. However, while dealing with the individual appeals, the following observations have been made by the Apex Court in Para 11 of the Mohan Pal's case supra:

"11. In Civil Appeals Nos. 3168, 3182, 3179, 3176-78, 3169 of 2002 arising out of SLP (Civil) No. 2224/2000, SLP (Civil) No. 4513024/2001, SLP (Civil) No. 1563/2001, SLP (Civil) No. 17174-17176/2000, SLP (Civil) No. 2151/2000, the respondents have been given "temporary" status, even though, they did not specifically fulfil the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the Scheme of 1.9.1993 is not an ongoing Scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e., at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also

make it clear that those who have already been given "temporary" status on the assumption that it is an ongoing Scheme shall not be stripped of the "temporary" status pursuant to our decision."

24. The contention putforth by the learned counsel for applicants that at the time when directions have been issued by this Court on 14.12.2000, in respect of the applicants, for accord of temporary status, the decision of Sarjuk Prasad was in vogue and according to it, being an ongoing Scheme, even if applicants were engaged in 1994, and were not in engagement on 1.9.1993, they are to be accorded temporary status. According to Shri Sinha as the later decision in Mohan Pal's case has not taken note of the case of Sarjuk Prasad supra, the same is per incurium.

25. The aforesaid plea cannot be countenanced. As a later decision in case of two decisions, having equal strength of Judges, the later one shall prevail and has to be treated as precedent under Article 141 of the Constitution of India.

26. In so far as the issue regarding prospective ruling is concerned, I find that the decision in Mohan Pal's case supra is not a case of prospective ruling. The issue regarding was interpretation as to applicability of Scheme and having held that the same to be one-time measure and not ongoing and the casual labour has a condition precedent for accord of temporary status that they should have been in employment on the date of

commencement of the Scheme, i.e., 1.9.1993, even after completing 206/240 days subsequently would not be amenable to the Scheme.

27. Para 11 of the Judgement in Mohan Pal's case supra, while dealing with the individual cases, before the Apex Court, where some of them had been given temporary status despite not fulfilling conditions laid down in Clause-4 of the Scheme, and some of them, who had been engaged even after commencement of the Scheme, and are not given temporary status, pursuance to the directions issued before this Court, no orders have been passed in their cases due to lapse of considerable time. In this background, the Apex Court made it clear that the temporary status would be conferred only to those casual labourers who fulfilled the conditions incorporated in Clause-4 of the Scheme. The only exception to the aforesaid is those casual labourers who had been suo moto, on assumption that the Scheme is ongoing had already been conferred temporary status their status has not been stripped off.

28. The contention putforth by Shri Sinha that as the directions have been issued in the case of the applicants to consider them for grant of temporary status and as the respondents have rejected their claim, they are covered under Para 11 of the Judgement in Mohan Pal's case supra and are in exception to the ratio laid down therein.

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29. I do not coincide with the applicants and this plea is liable to be out rightly rejected. The observations made in Para 11 pertains to those who sou moto on assumption of ongoing Scheme, have been granted temporary status. Casual workers who despite directions of the Court for temporary status were not accorded the same, their cases were also not interfered with. In a way they have not been accorded temporary status as they were not in engagement on 1.9.1993, no positive directions have been issued to confer them temporary status.

30. Applying the aforesaid in the conspectus of the present case, whereas on 14.12.2000, only consideration has been ordered for grant of temporary status to the respondents subject to the provisions of DoPT's Scheme of 10.9.1993. As the Scheme has been interpreted in Mohan Pal's case supra and the eligibility for temporary status casual labourers in engagement on 1.9.1993, any casual labour engaged later on even if he completes 206/240 days cannot be conferred temporary status. It is settled position of law that if a provision is interpreted in the Scheme, the same relates back to its inception.

31. If an interpretation given to the decision of the Apex Court in Mohan Pal's case supra as to exception to those in favour of whom Court's directions have been issued, the same would render the directions issued and the ratio held as otiose and nugatory. An observations in the peculiar facts and circumstances of the case, as a settled position of law, cannot be treated as precedent.

32. Moreover, interpretation which offends very intent and purpose of enactment should be avoided. The same analogy, applies to the decision in Mohan Pal's case supra. If an interpretation is to be given as to the applicants, being an exception, the very ratio that the Scheme is not an ongoing one would frustrate. I am supported in this view by the decision of Apex Court in P.Nirathilingam v. Annaya Nadar, 2001(9) SCC 673.

33. Moreover, High Court of Delhi in RA 6886 in CWP No.1447/2002 in which a resort had been made to Para 11 of the Judgement in Mohan Pal's case rejected the contention with the observation that the only exception to the one-time Scheme are those who had been suo moto conferred temporary status on the assumption of ongoing Scheme. The case of the applicants is distinguishable as in their cases only directions have been issued to consider them for accord of temporary status as per the DoPT's Scheme of 10.9.1993. None of them are eligible as not in engagement on 1.9.1993 for accord of temporary status.

34. As regards the alternate claim of the applicants, for regularisation under DoPT's OM dated 7.6.1988 is concerned, the same is no more res-integra in view of the Clause-10 of the Scheme of the DoPT where the further engagement is to be governed by the DoPT Scheme of 7.6.1988. However, I find that as per OM issued by the Government of India, Archeological Survey of India, regularisation/ absorption of casual

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labourers against Group "D" post is permissible under DoPT's OM dated 7.6.1988 subject to necessary relevant eligibility consideration.

35. The contention putforth by the learned counsel of the respondents, Shri Bhardwaj and reliance to decision of the Apex Court, and the contention that applicants are working in contingent establishment is concerned, the same on the face of it is liable to be rejected as the applicants had been working not a contingent establishment but on a permanent establishment, i.e., Ministry of External Affairs. However, his contention that the regularisation would depend upon availability of vacancies in Group "D", cannot be denied.

36. It is also not disputed that the applicants had worked for two consecutive years, for a period of 206/240 days, and were sponsored through Employment Exchange, having fulfilled the criteria they are amenable to the DoPT's Scheme of 7.6.1988, which is still in vogue.

37. In the result, for the above reasons, rejecting the claim of the applicants for accord of temporary status and further regularisation under DoPT's Scheme of 10.9.1993, OA is disposed of with a direction to the respondents to consider the applicants for regularisation under DoPT's Scheme of 7.6.1988 subject to their fulfilling the eligibility criteria laid down and also to the availability of vacancies in Group "D" posts in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member(J)