

Central Adminisrative Tribunal

Principal Bench

O.A.No.1214/2002
M.A.No.951/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of May, 2002

1. Pradeep Kumar
s/o Sh. Babu Lal
r/o H.No.15, Balmiki Basti
Near Express Building, Firoxeshah Kotla
New Delhi.
2. Sohan Pal
s/o Sh. Laloo Ram
H.No.43, Sttaff Quarters
Tis Hazari Court, Delhi - 54.
3. Smt. Geeta Rani
w/o Sh. Rakesh Kumar
H.No.G-240, Jagjit Nagar
Tisra Puta, Garli No.2
Delhi.
4. Smt. Vimla Devi
w/o Sh. Ram Awatar
H.No.A-2/68, Nand Nagri, Delhi - 93.
5. Ram Kishan
s/o Sh. Sombhu
R/o H.No.C-42/812
Quarters, Near Firoxeshah Kotla
Delhi Gate
New Delhi. Applicants
(By Advocate: Sh. Yogesh Sharma)

Vs.

1. N.C.T. of Delhi through
The Chief Secretary
New Sectt. New Delhi.
2. The Director
Directorate of Social Welfare
1, Canning Lane, K.G.Marg
New Delhi - 1.
3. The Principal/DDO
Govt. Lady Noyce School For Deaf & Dumb
Department of Social Welfare
GLNS, Complex, Delhi Gate
New Delhi. Respondents
(By Advocate: Sh. George Paracken)

O R D E R (Oral)

By Shanker Raju, M(J):

MA for joining together is allowed.

2. Applicants have impugned respondents' order dated 10.4.2002 whereby the services of the applicants have been dispensed with by issuing a notice for one month w.e.f. 11.5.2002.

3. Applicants, who admittedly had been working with the respondents since 1989 and were appointed on consolidated salary, on ad hoc basis, preferred OA 210/98, directions have been issued on 27.8.1998 to the respondents, despite the applicants being ad hoc workers, observations have been made by the Court to treat the applicants amenable to the DoPT Scheme of 1993 and thereafter to consider them for accord of temporary status and further engagement as well as regularisation. In compliance of these directions, by an order passed on 31.10.2000 temporary status had been conferred upon the applicants w.e.f. 3.9.1998 which through an amended order dated 6.12.2000 has been made effective w.e.f. 10.9.1993. The applicants have been accorded all the consequential benefits to which the temporary CLTS is entitled to vide an order passed on 20.12.2000. The services of the applicants have been dispensed with on 31.3.2001 and against which OA 1060/2001 preferred which was disposed of on 30.4.2001 by directing the respondents to re-engage the applicants immediately after reopening of the hostel and on after completion of the ensuing summer vacations. In compliance, the applicants have been re-engaged and thereafter by the impugned order they have been served with a notice of one month and their services have again been dispensed with, giving rise to the present OA.

4. Learned counsel for applicants has stated that as the respondents in OA 210/98 supra admitted that the applicants are ad hoc workers, placing reliance on a decision of the Apex Court in Rattan Lal & Others Vs. State of Haryana & Others, WP No.4600/83, decided on 16.8.1985 contended that denial of salary for Summer Vacations has been treated to be discriminatory under Articles 14 and 16 of the Constitution of India. In that case the ad hoc Teachers in Haryana State have approached the Apex Court whereby during Summer Vacations they have been denied their pay and allowances which has been observed that the policy of the 'ad-hocism' followed by the State Government for Summer Vacation which led to the breach of Articles 14 and 16 of the Constitution of India and to deny salary and allowances by resorting to artificial breaks referred to above is not legally tenable. In this background, it is stated that these are similarly circumstance, being ad hoc workers which was admitted by the respondents, their case, in all fours covered by the aforesaid decision and the stand of the respondents to deny them wages for this period and their action of dispensing of the applicants' services is in violation of the Articles 14 and 16 of the Constitution of India.

5. It is further stated that the applicants have been working with the respondents for the last 14 years and establishment of the respondents is not only includes Hostel but also Administrative Block and other Offices and there is an availability of work. Despite this, the services of the applicants have been

dispensed with arbitrarily. With the result, a notional break was created, which is an obstacle for regularisation of the applicants against Group 'D' post as per the DoPT Scheme of 1993.

6. It is further contended that by placing reliance on a decision of a Co-ordinate Bench in OA 2722/99, Smt. Vidhya Vs. Govt. of NCT of Delhi and Another, therein applicant has been working about 12 years, the respondents have been directed to consider the claim of the applicant for regularisation after relaxation of age sympathetically.

7. Learned counsel for applicant has further stated that whereas the impugned order has been passed to dispense with the services of applicants on the ground of closure of Hostel in ensuing Summer Vacation, in their reply, the defiance taken by respondents, that no work is available. Placing reliance on a decision of the Apex Court in M.S.Gill Vs. UOI & Others, AIR 1978 SC 781, it is contended that being a public order, the impugned order should contain the reasons and those reasons cannot be substituted by an additional pleadings taken in the counter. As the services of the applicants have been dispensed with on account of closure of Hostel, they may be continued on pro-rata basis and be paid for the work they perform and if there is no work during the Summer Vacation, they may be kept without wages. This would entitle them continuity of service for the purpose of regularisation.

8. On the other hand, respondents have filed their reply today, which is taken on record. In this reply, it is contended that as per the decision of the Apex Court in Union of India & Another Vs. Mohan Pal, etc., 2002(4) SCALE 216 wherein the Apex Court while dealing with the DoPT's Scheme, more particularly in Para 7, which envisages that as the Clause 7 of the Scheme it is clear that despite the conferment of 'Temporary status' the services of casual labourer may be dispensed with by giving one month notice in writing. It has also been held that the termination cannot be resorted at the whims and fancies of the respondents and it can be resorted in case of any misconduct committed by the casual labour and can also be resorted to, even if there is a non-availability of work. As a Summer Vacation, in the respondents' office, the work is not available for the applicants, they have rightly resorted to the termination and they would be considered for re-engagement immediately on opening of the Hostel. It is further stated that once the applicants have accepted the accord of temporary status and the consequential benefits, they have acquiesced and are estopped from challenging the same and claiming that they had worked as ad hoc workers to get the benefit of the Apex Court in Rattan Pal's case supra. It is also stated that the applicants are restrained from abrogating and it is the contention of the learned counsel that the applicants have not fulfilled the eligibility conditions as such they have not been regularised in service. He further states that their action is in consonance with the DoPT's Scheme of 1993 as well as the decision of the Apex Court in Mohan Pal's case supra.

9. I have carefully considered the rival contentions of both the parties and perused the material available on records. Resort of the applicant to claim benefit of the decision of the Apex Court in Rattan Pal's case supra cannot be countenanced. It is not disputed that in OA 210/98 respondents themselves made a statement that the applicants are ad hoc workers and are being included under the Scheme of DoPT they have been accorded, temporary status with consequential benefits. Once the claim has been accepted and at that time no challenge is put to the respondents' action, it is not open to the applicants now to get the benefit of decision of the Apex Court. Further more, the decision of the Apex Court supra, was in peculiar facts and circumstances, where ad hoc Teachers were denied the salary, which cannot be made applicable in the case of casual workers who have different status and are covered under a different Scheme of DoPT of 1993. In this view of the matter, the claim of the applicants is rejected.

10. As regards the plea of the applicants that the respondents have not given detailed reasons in their impugned order passed, whereas different reasons have been accorded in the counter reply, which is not permissible in view of the decision of the Apex Court in M.S.Gill's case supra, I find that the dispensation of the services of applicants was due to closure of hostel in the ensuing Summer Vacation. Whereas in the counter reply it has been stated that no work is available to the casual labour, i.e.,

applicants, they cannot be retained in service. In my considered view, the reasons are no different. Closure of hostel leads to non-availability of work. As such though specific reasons have not been assigned in the impugned order, it is to be implied that work is not available, the services of the applicants have been dispensed with. The aforesaid action of the respondents by giving them one month's notice is perfectly in order and as per Clause 7 of the DoPT Scheme of 1993, which has been upheld by the Apex Court in Mohan Pal's case, wherein observations have been made that in the event there is non-availability of work, the respondents may resort to terminate the services of the casual labour after giving one month's notice. Respondents have complied with this mandatory requirement, no fault is found in the impugned orders.

11. As regards the contention of the applicants that they may be continued on pro-rata basis and may not be paid salary for the period of the Summer Vacation as has been treated in case of other regular employees. On account of holidays a casual labour is not entitled to be paid, and this period is treated as continued service for regularisation, the same would be mutatis mutandis applied to these vacations and the action of the respondents to dispense with services instead of continuing them as casual labour without paying them is prejudicial to their interest in further regularisation is concerned, I find that on account of non-availability of work, there is no alternative with the respondents but to resort to the termination of their services under clause 7 of the Scheme. However, it goes without

saying that whenever Summer Vacation ends and the hostel opens it bestow a right to the applicants to seek engagement and the respondents have to consider it. More particularly when there had been working continuously for the last fourteen years leading to presumption of availability of work with the respondents.

12. As regards the regularisation is concerned, the respondents themselves accorded temporary status to the applicants, after they have found to have worked for more than 240 days in a calender year. As nothing has been brought on the record to establish as to how the applicants are ineligible under the DoPT's OM of 1993, they have a right to be regularised against the Group 'D' posts. However, this would be subject to the availability of the work and further regularisation is to take place against two out of three vacancies available as per the rules.

13. In the result, though not acceding to the claim of the applicants, for quashing of the termination order, the OA is disposed of with a direction to the respondents, for the reasons recorded above, to engage the applicants immediately after the hostel opens for summer vacation and further consider them for regularisation subject to availability of vacancies as per rules and law.

14. However, before parting with, though it does not lie within my jurisdiction, but I am constrained to observe ^{to} that the respondents as a

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model employer and Country being a Welfare State, it is incumbent upon the respondents, i.e., Government, to provide employment to the applicants more particularly when they had carried for the last fourteen years without any complaints and their work having been found satisfactory.

15. With the above observations, the OA is disposed of. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/

fresh MA for
executing order