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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2352/2001

NEW DELHI, THIS THE 03rd DAY OF June 2002

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Smt. Sunita
wd/o Late Shri Chander Bhan
R/o 3/5, Veena Enclave, Nangloi
New Delhi.Applicant

(By Advocate Shri Yogesh Sharma)~

V E R S U S

1. GOVT. OF NCT OF DELHI THROUGH
THE CHIEF SECRETARY
New Sectt., New Delhi.
2. The Director
Directorate of Social Welfare
Govt. of NCT, K.G. Marg, New Delhi - 1.
3. The Deputy Director
Directorate of Social Welfare
Govt. of NCT, K.G.Marg, New Delhi - 1.

....Respondents

(By Advocate Smt. Sumedha Sharma)

O R D E R

BY HON'BLE SHRI GOVINDAN S.TAMPI.

Reliefs sought by the applicant are as below :-

(i) that the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the action of the respondents not considering the case of the applicant without sponsoring her name from the employment exchange is illegal, unjust and arbitrary and against the law laid down by the Hon'ble Supreme Court and consequently the applicant is entitled for considering her case for her regularisation.

(ii) that the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicant for her

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regularisation in any institution of the Social Welfare Deptt. on the basis of amending Recruitment Rules for Group D employees after preparing the seniority list of daily wager/part timer like applicant.

(iii) that the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to consider the case of the applicant for grant of temporary status as per C/L Scheme after treating the applicant as full time worker as granted in the case of Pradeep Kumar Vs. GNCT of Delhi.

(iv) that the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicant for revising her wages on the basis of revised pay scale w.e.f. 1-1-1996 and

(v) any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant. #

3. Heard Shri Yogesh Sharma, 1d. counsel for the applicant and Smt. Sumedha Sharma, 1d. counsel for the respondents.

4. Smt. Sunita, the applicant has been working since October 1991 as Sweeper (Safaiwali) under Sudpt., Day Care Center, Gulabi Bagh, under Social Welfare Deptt. She is termed as a part time worker @ Rs. 788/- per month, though infact she has

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been on duty for more than 8 hours a day. In terms of GNCT Notification dated 9-9-95, revising the Recruitment Rules indicated that 50 % vacancies arising in Group D would have to be filled from those working on part time basis for more than 5 years. Her case however, has not been considered for such appointment/regularisation. Infact, no seniority list of part time workers is being maintained by the respondents. In response to her representation, the applicant has been advised on 6-5-99 that vacancies would be filled up only by candidates who are registered with the Employment Exchange. This was improper, illegal and arbitrary. Further, the applicant and other similarly placed employees are being paid the wages only @ Rs.788/- per month which was improper. Her representations for improving her lot have evoked no response. The applicant, therefore, prays that the Tribunal should intervene in the matter and give her the benefit of higher pay as well as temporary status/regularisation, keeping in mind the decisions of the Tribunal in OA 2722/1992 filed by Smt. Vidhya, decided on 30-6-2000, Varsha Rani Vs. GNCTD (OA 1673/96) decided on 1-7-97, as well as the decision of Hon'ble Supreme Court in the case of State of Haryana Vs. Piara Singh & Ors. (1992 (4) SCC 188). The above pleas were further reiterated by Shri Yogesh Sharma, 1d. counsel for the applicant inviting attention to decisions in OA 770/2001 dated 13-3-2002 as well as OA 1064/2001 dated 6-3-2002 in similar matters. In view of the above, the applicant should get the benefit of temporary status as well as regularisation in terms of DOPT Scheme dated 10-9-93, prays Shri Yogesh Sharma.

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5. The pleas raised by the applicant are contested by the respondents. According to them, though the applicant Smt. Sunita was originally engaged during October 1991, had been away from duties from September 1993 to February 1995, as per record maintained in the office. That being the case, her averment that she was working continuously cannot be accepted. The respondents do not deny that she was being paid consolidated salary of Rs. 788/- pm and state that as she was only a part time worker and the rates for such part time workers had not been revised by the Vth Central Pay Commission, she could not be paid at any enhanced rate. She was not a casual worker and therefore she did not come within the purview of DOPT's Scheme for grant of temporary status/regularisation of casual workers.

6. Smt. Sumedha Sharma, 1d. counsel for the respondents reiterated her pleas in all the OAs and also relied upon the decision of the Tribunal in Shakuntala's case (OA 538/2001). The OA should, therefore, fail, according to her.

7. I have carefully considered the matter. The applicant who is a part time worker, seeking grant of temporary status/regularisation in her post. The respondents, on the other hand, state that being a part time worker, she was not eligible for the benefits she was seeking. The applicant has also relied upon few decisions of the Tribunal, which have been issued earlier, allowing OAs in similar cases. I note that I had myself in OA 770/2001 and OA 1064/2001

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granted similar benefits to a few applicants. However, the position has undergone a total change with the decisions of the Hon'ble Supreme Court in the case of Punjab State Electricity Board & Anr. Vs. Wazir Singh (JT 2002 (3) SC 49) and VOI & Anr. Vs. Mohan Pal and Ors. (2002 (4) SCALE). In the case of Punjab Electricity Board, it has been indicated that those from the work charged staff, who were working as daily wagers on the cut off date when the Circular was issued and had completed 500 days, alone would be entitled for regularisation. The relevant portion of the said order reads as below :-

"The High Court read the circular only upto the cut-off date and not thereafter. The latter part, which clearly states "and are continuing in service of board" in order to become eligible to be converted into work-charged employees was lost sight of by the High Court. Thereafter, it was held that the sole condition to be fulfilled was that the daily wage worker should have put in 500 working days up to the cut-off date. That interpretation will not be correct in the circumstances of the case, when two conditions had been imposed ; firstly that the concerned daily wage worker should not only put in 500 working days in service upto the cut-off day, and secondly, should be in continuous service upto the date of issuance of the circular in order to become eligible to be converted into daily wage worker. The second aspect could not have been ignored at all.

8. Subsequently, the Hon'ble Supreme Court has, while dealing with DOPT's Scheme on Casual Labourers (Grant of Temporary Status and Regularisation) dated 10-9-1993, in Mohan Pal's case directed that the benefits of the Scheme would be applicable only to those who were in employment on the commencement of the Scheme. The Hon'ble Supreme Court has observed in the said judgement as follows:-

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"5. The first question is to be decided on the basis of the interpretation of clause 4 of the Scheme. As already noticed, the scheme came into effect from 1-9-1993. Clause 4 (1) of the Scheme reads as follows :-

"temporary" status - (1) "temporary" status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of office observing 5 days week)."

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 ongoing 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 ongoing 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 guideline 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.

And this has become the law. Therefore, any order by any authority which is not in consonance with the above decision would no longer be in operation. It would mean, therefore, that the grant of temporary status/regularisation of casual labourers would be available only to those who were in position on 10-9-93, when the Scheme was introduced and who had completed 240 days or 206 days, as the case may be. The applicant, would have, inspite of being part time worker, completed the requisite period of service, but

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her not being in position on 10-9-93, cannot gain any benefit from the Scheme. As the respondents have correctly averred, she can take her chance when Group D vacancies arise and applications are called for, provided she fulfils the requirements and her case would be considered in accordance with the Rules and Instructions. She cannot in the present circumstances, ask for anything more.

8. In the above view of the matter, I am convinced that the applicant has not made out any case for my intervention. OA, therefore, fails and is accordingly dismissed. No costs.

(GOVINDAN S.TAMPI)
MEMBER (A)

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