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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2366/2001

NEW DELHI, THIS THE 03rd DAY OF JUNE, 2002

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

1. Subhash S/o Shri Sri Ram
R/o H.No.1962, Kotla Mubarak Pur
Balmiki Basti, Delhi
2. Rup Kumar S/o Sh. Sahaj Ram
R/o H.No.1991, Kotla Mubarakpur
Balmiki Basti, Delhi

...Applicants

(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 Supdt.
Children Home for Boys - I & II
Directorate of Social Welfare
Kasturba Niketan, Lajpat Nagar,
New Delhi.

...Respondents

(By Advocate Mrs. Sumedha Sharma)

O R D E R

BY HON'BLE SHRI GOVINDAN S.TAMPI,

Reliefs sought by the applicants 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 applicants without sponsoring their names from the employment exchange is illegal, unjust and arbitrary and against the law laid down by the Hon'ble Supreme Court and consequently the applicants are entitled for considering their case for their regularisation.

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(ii) that the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicants for their 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 time like applicants.

(iii) that the Hon'ble Tribuna may further graciously be pleased to pass an order directing the respondents to consider the case of the applicants for grant of temporary status as per C/L Scheme after treating the applicants as full time workers as granted in the case of Pardeep 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 cases of the applicants for revising their 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 applicants.

2. Heard Shri Yogesh Sharma, ld. counsel for the applicant and Smt. Sumedha Sharma, ld. counsel for the respondents.

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3. Subhash. applicant No.1 has been engaged as Sweeper (Safaiwala) since February 1989 in Children Home for boys - I & II, Kasturba Niketan, Lajpat Nagar under Department of Social Welfare. Applicant No. 2 Rup Kumar has been engaged since December, 1999 in the same place. They are performing job of permanent nature but were being paid @ Rs.788/- pm as part time workers. 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. Their cases however have not been considered for such appointment/regularisation. Infact, no seniority list of part time workers is being maintained by the respondents. Further, the applicants and other similarly placed employees are being paid the wages only @ Rs.788/- per month which was improper. The applicants, therefore, pray 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 2722/1999 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, ld. 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

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get the benefit of temporary status as well as regularisation in terms of DOPT Scheme dated 10-9-93, prays Shri Yogesh Sharma.

4. Respondents submit that both the applicants are only part time workers and their regularisation against group D post was not covered under Recruitment Rules. Further, due to introduction of private sanitation agency for the post of sweepers have been declared surplus. It is not correct to say that the applicants have been working for more than 8 hours. Infact they are working for just four hours for which they are being paid @ Rs.788/- per month. The applicants can, if they so desire, apply for direct recruitment for Group D post, when vacancies arise and applications are called for and their cases would be considered, in accordance with Rules and Instructions in force. These two applicants are also not covered by DOPT's Scheme for grant of temporary status and/or regularisation, notified on 10-9-1993.

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

6. I have carefully considered the matter. The applicants, who are part time workers, are seeking grant of temporary status/regularisation in their respective posts. The respondents, on the other hand, state that being part time workers, they are not eligible for the benefits they are seeking. The

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applicants also have relied upon few decisions of the Tribunal, which have been issued earlier in their favour. I recall that I had myself in OA 770/2001 and OA 1064/2001 granted similar benefits to the applicants. However, the position has undergone a drastic change with the decisions of the Hon'ble Supreme Court in the case of Punjab State Electricity Board & Anr. Vs. Mazir Singh (JT 2002 (3) SC 49) and UOI & Anr. Vs. Mohan Pal and Ors. (2002 (4) SCALE).

In the case of Punjab Electricity Board, it has been indicated that those of 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.

7. Subsequently, the Hon'ble Supreme Court has while dealing with DOP's Scheme on Casual Labourers (Grant of Temporary Status and Regularisation) dated 10-9-1993, in Mohan Pal's case have 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 below :-

"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. The case of the two applicants would have to be examined in this background. The law is settled by the Hon^{ble} Supreme Court that grant of temporary status can be considered in terms of DOPT's Scheme of 10-9-1993 only when two conditions are fulfilled i.e. the applicants have

completed the requisite period of 240 days or 206
days, as the case may be, in a year (continuous 12 months) and they have been in position on the day when the Scheme was notified i.e. 10-9-93. Applicant No.1 in this case is found to have been engaged since February 1989 and his case would merit consideration provided he has completed the requisite period in terms of the Scheme. In this view of the matter, my decision dated 8-1-2002 in OA 1587/2000 filed by Tulsi Ram & Ors., reiterated by me in my order dated 6-3-2002 in OA 1064/2001, filed by Smt. Shanti Devi & Ors. would be relieved. Relevant portion of my order in Tulsi Ram's case is as below :-

"I have carefully considered the matter and find that the applicants had been working from 1997(1) and 1998 (2 & 3) almost continuously though with few days break which can be termed only as technical /artificial breaks. It is also seen that though they have been termed as part time workers, work was extracted from them for full time and therefore they should be considered as full time casual employees. That being the case they were correctly be entitled for grant of temporary status once they complete 240 days and for regularisation thereafter in terms of the rules in turn. The decision of the Tribunal in the case of Vidya (OA No. 2722/99) would also come to their help. However, their request that they should be given full salary for the period from 1997 onwards cannot be accepted as they had acquiesced in the payment of part time salary and it cannot be re-opened at this stage."

The same would not, however, be the status in respect of applicant No.2 Rup Kumar. Admittedly, he has been engaged only since 1999, i.e. much after DOPT's Scheme for grant of temporary status as well as regularisation of casual workers had into effect. Therefore, in view of Hon'ble Supreme Court's finding in the case of Mohan Pal (supra), the applicant cannot at all be considered for grant of temporary status in

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terms of DOPT's Scheme of 10-9-93. He can, as respondents have correctly stated apply for group D post in the respondents organisation, when vacancies arise and applications are called for, provided he fulfills the qualifications and his case would be considered in accordance with the Rules and Instructions at the relevant time, he cannot ask for anything more at present and no directions can be issued to the respondents in his case.

8. In the above view of the matter, the OA succeeds in respect of applicant No.1 Shri Subhash but fails in respect of applicant No.2 Shri Rup Kumar and is accordingly disposed of. Respondents are directed to consider the case of grant of temporary status to applicant No.1 Shri Subhash from the date on which he had completed 240 days or 206 days, as the case may be and grant him pay at the minimum of the scale of Group D post from that date. This shall be done within three months from the date of receipt of a copy of this order. He would not, however, be entitled for any back wages. The request of applicant No.2 Rup Kumar is devoid of any merit and is accordingly dismissed. No costs.

(GOVINDAN S. TAPI)
MEMBER (A)

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