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IN THE CENTRAL ADMINISTRATIVE TRIBNAL

NEW DELHI

O.A. No. 1937/99 with MA-260/2000
T.A. No.

DATE OF DECISION 26-06-2000

Shri Mahipal & Ors. Petitioner(s)

Sh. S.Y. Khan & Sh. T.C. Aggarwal Advocate for the
Petitioner(s)

Versus


U.D.I. & Ors. Respondents

Sh. R.V. Sinha Advocate for the
Respondent(s)

CORAM:

Hon'ble Dr. A. Vedavalli, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(Dr. A. Vedavalli)
Member(J)

Cases referred:

1. Central Social Welfare Board Vs. Anjali Bepari (JT (1996) 8 SC 1).
2. Gujarat Electricity Board Vs. Hind Mazdoor Sabha (1995(2)SCSLJ 93)
3. Secretary, Haryana Electricity Board Vs. Suresh & Ors. (1991(1) SLJ(SC 413)).

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1937 Of 1999
with
MA.No.260 of 2000

New Delhi, this 26th day of June, 2000

HON'BLE DR. A. VEDAVALLI, MEMBER(J)

1. Shri Mahipal
S/o Shri Tulsi Ram
R/o A-59 Jagatpuri
New Delhi-8.
2. Shri Manoj Singh Rawat
S/o Late Shri Anand Singh Rawat
15-1A Aram Bagh
New Delhi. Applicants

(By Advocates: Shri S.Y. Khan & Shri T.C. Aggarwal)

versus

Union of India, through

1. The Director General
All India Radio
Akashvani Bhawan
Parliament Street
New Delhi-110001.
2. The Chief Engineer
Civil Construction Wing
All India Radio
PTI Building
Parliament Street
New Delhi-110001. Respondents

(By Shri R.V. Sinha, Advocate)

Order

By Hon'ble Dr. A. Vedavalli, M(J)

The two applicants, Mahipal Singh and Manoj Singh Rawat, are casual labourers. They claim that they have been working under respondent no.2 as Safaiwala/Peon on casual basis since the year 1995. They are aggrieved by a circular dated 9/10.8.1999 (Annexure A-1) issued by the Executive Engineer(Civil), Civil Construction Wing, All India Radio, Mandi House

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Project Division, New Delhi calling for applications from interested persons for two posts of Peon and one post of Safaiwala in that office before 14.9.1999.

2. The applicants have sought the following reliefs in this OA:-

i) Direction to respondents to confer temporary status on them on completion of 206 days from the date of their initial engagement;

ii) Direction to the respondents to regularise the applicants against regular posts of Safaiwala and Peon against which they were working on casual basis;

3. This OA has been filed on 2.9.1999. The respondents have filed their counter to which a rejoinder has been filed by the applicants. The applicants have also filed a MA.No.260/2000 submitting inter alia that the counter filed by the respondents is vague and sought issue of directions from the Tribunal to the respondent to produce the following records:

"a) Muster Roll, Attendance Sheet and payment sheets etc. in respect of the applicants from 1995 till date of their termination.

b) Contract entered into contractor and their forms as required to be maintained under the rules, of both sides.

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c) Details of payments made to applicants directly or through contractor.

d) Details of the authorities who have prepared the attendance register checked and supervised."

4. Applicants have also stated in the said MA (vide paragraph-3) that their services have been dispensed with from 3.8.1999. The respondents have filed a reply to the said MA and a rejoinder has been filed by the applicants. This MA is listed along with the OA and both have been heard together.

5. Heard the learned counsel for both the parties and perused the pleadings and all the relevant material and documents placed on record.

6. The applicants submit that they have been working against regular posts of Safaiwala/Peon under respondent no.2 ever since they had been engaged as casual labourers in the year 1995. Initially they were paid on muster roll basis. However after six months they were engaged through contractor and continued through contractor. That system was discontinued in 1998 and the respondents continued to engage them as casual workers. The applicants state that they are entitled to all the reliefs which they claimed in this OA.

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7. Learned counsel for the applicants relied upon the decisions of the Apex Court in Central Social Welfare Board Vs Anjali Bepari (JT(1996) 8 SC.1), Gujarat Electricity Board Vs. Hind Mazdoor Sabha (1995(2) SCSLJ 93) and Secretary, Haryana Electricity Board Vs. Suresh & Ors. (1994(1) SLJ(SC) 413) and contended that even though applicants were engaged through a contractor for some time, they are entitled for absorption and appointment against regular vacancies under the respondents.

8. Learned counsel for the respondents raised a preliminary objection that the impugned order was issued by the executive Engineer (Civil) under his own administrative capacity and he has not been impleaded as a party and the OA is, therefore, liable to be dismissed for non-joinder of necessary party.

9. Learned counsel for the applicants, in reply to the said objection, submitted that the Executive Engineer(Civil) acted under delegated powers and the principal employer is respondent no.2 and being junior to him, he need not be impleaded as a party.

10. Learned counsel for the respondents has not been able to refute the above submission. In the circumstances, the preliminary objection

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raised by the respondents is rejected as it has not been substantiated by any valid grounds or material documents.

11. Learned counsel for the respondents submitted that applicant no.1 was engaged as a Safaiwala on casual basis with effect from June 1995 to November 1995 and applicant no.2 was engaged only for the month of November 1995 and thereafter for certain intermittent periods and not continuously. He denied that the applicants have been working against any permanent or regular post since 1995 and stated that the impugned circular was for filling up some vacancies which fell vacant due to the transfer of some class-IV employees. He submitted that it is the Executive Engineer(Civil) who was competent to enter into contracts and applicants were paid for the months for which they were engaged through a contractor by him and not by respondent no.2. He prayed that as the OA is devoid of any merit it may be dismissed with costs.

12. I have considered the matter carefully. It is seen that the fact situation in this OA unfortunately is neither clear nor complete. Neither the applicants nor the respondents have given any specific factual details and supporting material as to the nature

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of the contract, its terms and conditions including duration and completion of work etc. and the particular days or periods for which the applicants were engaged through the contractor and whether the work is still available or not with the respondents. The reason for the disengagement or termination of the applicants' services with effect from 3.8.1999 (paragraph-3 of the MA.No.260/2000) as noted supra, i.e. before the filing of the OA on 2.9.1999, is not known. The applicants have not bothered to claim re-engagement as a relief in the OA though their disengagement has taken place much earlier to the filing of the OA. It is only in paragraph-4 of MA.No.260/2000 that a plea is taken by them that termination of their services is not in accordance with law. There is no prayer for amendment of the OA or to treat the MA as a part of the OA and in fact the said MA is only for production of records and details mentioned therein as already noted supra. Hence, the question of quashing of disengagement of the applicants also would not arise for consideration in the present O.A. Moreover, the respondents in their reply to the aforesaid MA, have stated that they were engaged intermittently and they never completed 206/240 days of work continuously under the respondents and they are not entitled for re-engagement against a regular post or conferment of temporary status. They have

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furnished certain documents ((Annexure AR colly with the counter to the MA), i.e. Attendance Sheets and Payment Sheets in respect of applicants for casual service under the respondents and stated that the documents pertaining to the engagement and payments to the applicants under the contractor are to be furnished by the applicants themselves or their contractors.

13. The factual picture as given in this OA, as already noted supra, is absolutely vague, sketchy and incomplete. The applicants, I find, have not been able to establish the violation of any of their vested legal rights by the respondents on any valid and tenable grounds. The OA, in my view, is therefore, devoid of any merit and applicants are not entitled to the reliefs sought by them.

14. However, keeping in view that the applicants are casual labourers and applicant no.1 is also stated to be handicapped and both of them did work for some time as casual labourers directly under the respondents as admitted by them in the counter and in the reply to the M.A and they worked through a contractor/contractors also for certain periods and to meet the ends of

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justice, this OA is being disposed of with the following directions to the respondents:-

(i) If any work of casual nature is already available with the respondents or if it becomes available in future and steps are taken to engage casual labourers, they should inform the applicants sufficiently in advance and give them an opportunity to submit their application for re-engagement without insisting that they should be sponsored by the employment exchange;

(ii) In the event of submission of such applications by the applicants for re-engagement, they should be considered on their merits along with the other eligible candidates, if any, in the light of the relevant rules and instructions giving due weightage for their past service under the respondents and in preference to their juniors and freshers;

(iii) In case the last date for the submission of applications for the regular posts of Peon/ Safaiwala in the impugned circular dated 9/10.8.1999 (Annexure A-1 to the OA) is further extended or a fresh circular is issued, the respondents should inform the applicants of the same sufficiently in advance and give them adequate opportunity to submit their applications for the said posts.

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(iv) In case the applicants submit their applications and they are found to be fit and eligible, they should be considered for selection alongwith other eligible candidates on their merits and in accordance with the relevant rules and instructions giving due weightage to their past service under the respondents.

15. Interim order earlier granted stands vacated. OA and MA No.260/2000 are disposed of accordingly. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

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