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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1551 of 1998

M.A.No.1612/98

New Delhi, this the 10th day of May, 1999

HON'BLE SHRI N. SAHU, MEMBER(A)

1. Suresh Kumar
2. Raj Kumar
3. Uday Bhan
4. Arjun Singh
5. Jagpati Ram
6. Manjit Singh
7. Pramod Kumar
8. Ramesh Chowdhary
9. Anirudh Mishra
10. Lal Brat
11. Dalbir Singh
12. Vinod Kumar
13. Suresh Singh
14. Narsingha Rao
15. Ishwar Das
16. Ishwar Singh
17. Rajender Singh
18. Ram Pal
19. Jagat Singh Negi
20. Harish Chand Tiwari
21. Dhirender Singh
22. Pan Singh Bisht
23. Sanja
24. Uma Shankar
25. Rajesh Kumar
26. Hari Prakash

....Applicants

All the applicants working at Govt.
Medical Store Depot Behind Qutab Hotel
New Delhi-16.

All C/o L-116, Saurav Vihar, Badarpur,
New Delhi-44

(By Advocate: Dr. Surat Singh)

Versus

1. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. The Additional Director (St)
Medical Store Organisation
DGHS, West Block No.1,
Wing No.6, R.K. Puram,
New Delhi.
3. The A.D.G. (St)
Govt. Medical Store Depot,
Behind Qutab Hotel,
New Delhi-110016.

....Respondents

(By Advocate: Shri K.C.D. Gangwani)

Parasimha

O R D E R (ORAL)

By Hon'ble Shri N. Sahu, Member (A)

Heard Dr. Surat Singh, learned counsel for the applicants and Shri K.C.D. Gangwani, learned counsel for the respondents.

2. 26 applicants have joined together in this O.A. seeking a writ of mandamus, directing the respondents to take steps to regularise their services and to be paid as regular employees applying the principle of "equal pay for equal work" from the date of joining the job, with consequential benefits. M.A.1612/98 for joining together is allowed.

3. Admittedly the applicants have been conferred temporary status from 28.2.95. Learned counsel for the applicant prays for regularisation of the applicants on the basis of the principles laid down by the Hon'ble Constitution Bench of the Supreme Court in the case of State of Haryana & ors. vs. Piara Singh and ors. - JT 1992(5) S.C. 179. Relevant portion of that judgement reads as under:-

"If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is

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regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person."

Learned counsel for the applicant also relies on the order of the Hon'ble Supreme Court in 1999 (3) Supreme 277.

4. Learned counsel for the respondents, on the other hand, states that the applicants are being paid remuneration for the work turned out by them and this court cannot give any direction outside the Scheme for grant of temporary status.

5. Even Piara Singh's case (supra) clarifies that regularisation can be directed only when there is a post. Creation and abolition of posts are within the sovereign discretion of the State. The Supreme Court in Piara Singh's case almost mandated the Government to look into the cases of such workers who are applicants in this case sympathetically and strive to absorb them as early as possible.

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6. In the circumstances, it is hoped that the respondents shall consider the claims of the applicants and move to the Government a proposal for creation of additional posts to absorb them. It is also necessary that this matter be completed at the earliest possible time. As the applicants have admittedly been conferred temporary status, they should be paid wages at daily rates with reference to the minimum of the pay scales for a corresponding regular group 'D' official including DA, HRA and CCA and after rendering three years continuous service of temporary status, the casual labourers shall be treated on par with temporary group 'D' employees for the purpose of contribution to GPF etc. All the benefits conferred on them at paras 5 and 6 of the O.M. dated 10.9.93 shall be conferred on them. Respondents agreed to set right this in terms of decision in Raj Kamal's case (O.A.91/94).

7. The O.A. is disposed of as above. No costs.

N. Sahu
(N. SAHU)
MEMBER(A)

/dinesh/