

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 196 of 1998 decided on 10.03.1998
Name of Applicant-- Yashoda Rani (Mrs.) (8)
By Advocate : Sh. E. X. Joseph

Versus

Name of respondent/s Union of India - Secy. M/o Personnel
By Advocate : Shri V. S. R. Krishna

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu (N. Sahu) 10/3/98
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.196 of 1998

New Delhi, this the 10 day of March, 1998.

Hon'ble Mr. N. Sahu, Member(A)

Yashoda Rani (Mrs.)
Wife of late Shri Anil Kumar
R/o 36-A, Railway Colony
Tughlakabad - 110 044

...Applicant

(By Advocate : Sh.E.X.Joseph)

versus

Union of India : through

1. The Secretary to the
Govt. of India
Ministry of Personnel,
Public Grievances & Pensions
Department of Personnel & Training
North Block, Central Secretariat
New Delhi - 110 001
2. The Chairman
Staff Selection Commission
Block 12, C.G.O. Complex
Lodi Road
New Delhi

... Respondents

(By Advocate : Sh.V.S.R.Krishna)

ORDER

By Sh. N. Sahu, Member(A) -

The prayer in this OA, is for a direction to the respondents to continuously engage the applicant as Casual Labourer as also to grant temporary status and eventually consider her for regularisation in Group "D". Her husband worked as a Casual Labourer under Respondent No.2, the Staff Selection Commission, since 24.11.1987 and expired on 12.02.1993. It is stated that the applicant was appointed as a Paper-checker, on daily wages on compassionate grounds on 16.03.1993 and worked till December, 1993. She was re-employed from 01.02.1994 and worked on daily wages

upto September, 1996 without any break. She was again engaged for thirty-eight days in 1997 and for ten days in 1998 upto 31.01.1998. She is continuing in the service on the basis of interim orders. She is a graduate and has two small children and states that the wage received from Respondent No.2 is her only source of income. She claims temporary status as per the Scheme laid down by the Government because she worked for more than 206 days during the period from 01.02.1994 to September, 1996. It is urged that the short breaks ordered by the authorities have to be ignored for the purpose of calculating her entire service. She claims to do the work of an Assistant as a Paper-checker when she has been paid wages only as a Group "D" employee.

(10)

2. After notice, the respondents state that the applicant never continuously worked for more than 160 days in a year. At para 5 of the counter, the number of days worked per year is extracted:

S.No.	Year	No.of days
1.	1993	60
2.	1994	123
3.	1995	153
4.	1996	135
5.	1997	38
6.	1998	10 (Till 31.1.98)



It is stated that the engagement is purely to cater to the needs of the respondents for the examination period. The engagement is confined for the work of opening of post-examination material. The engagement is limited to a particular period. Secondly, in order to maintain secrecy, the same people are not engaged in the next examination. This prevented either a stake in the employment or a sense of predictability. This is done deliberately to prevent abuse of the engagement of the persons like applicant in sensitive work of post-examination evaluation. It is next submitted that the openers/scorers, which is the applicant's job are paid a remuneration of Rs.120/- per day whereas the wages paid to a casual labourer are Rs.96/- per day. This higher payment distinguishes the applicant from the routine type of casual labourers. Learned counsel for the respondents Sh.V.S.R. Krishna states that the payments to these openers and scorers are made from a confidential account operated at the State Bank of India. The cheques issued to all scorers along with paper-setters, examiners or advisors are signed by the Chairman himself. This is done to impress on the sensitivity and exclusiveness with which the persons like the applicant are treated. Learned counsel for respondents urged that the applicant cannot be treated like an ordinary casual labourer because although engagement is casual, the remuneration is paid for professional and special services through a cheque from a special fund for doing the skilled work of scoring. As mentioned above, the applicant is a

graduate and is paid an amount which is more than usually paid to a daily rated casual labourer. It is urged that the subordinate services commission is entrusted with the task of holding competitive examination for Group "B" & "C" non-technical posts in Govt. of India. The examinations are neither regular nor continuous. The above features characterize these payments as payments made to professionals rather than to casual labourers. It is stated that besides the panel of nearly eighty names containing persons out of whom some will be called for each examination, there is a separate parallel engagement of casual labourers for doing the job of what is predominantly a job of physical exertion and such casual labourers are not qualified beyond the school level. There is a seniority roster of those engaged and those who are granted temporary status. Sh.Krishna, learned counsel for respondents distinguishes these type of casual labourers from the one's engaged by the Respondent No.2 for doing the sensitive, secret job of opening and scoring. It is next submitted that Respondent No.2 is interested in ensuring speedy conclusion of an examination with efficiency and secrecy." For this purpose, the applicant and like of her who are selectively called are not paid on the basis of daily wages but on the basis of the number of papers scored per day to ensure that the given work is not staggered. Sometimes, for each examination there are instances of the persons like the applicant who had deposited in their pass-books, cheques as high as of Rs.10,000/- per session. If the applicant is treated like a daily wager then they will have a stake in

(2)

prolonging the work. The secrecy and sensitivity will vanish. A certain casualness and flippancy will inform their attitudes. In view of the above, Sh.Krishna urges that an element of public interest is involved and there should be no erosion into the regimen of this special scheme by judicial interference. The important point made out by Shri Krishna is that if the applicant is treated as casual labourer and conferred temporary status leading ultimately to a claim for regularisation, Respondent No.2 will not have the resilience in operating the scheme. As mentioned above, there is a panel of eighty names out of which for every examination a specific number of persons is called and this number is called on random without repetition. In the event "x", "y" or "z" is called who are junior to say "a", "b" or "c", than a, b and c who have been given temporary status and are retained as casual labourers will object for not being assigned the work being seniors. It is unnecessary to identify all ad-hoc engagements only as casual labour. If the logic of what the applicant prays in this OA is extended; then even examiners and paper-setters will claim this temporary status and also claim certain rights. It is next argued by the learned counsel for respondents that temporary status carries with it certain privileges conferred by the Scheme itself, namely, leave account, medical facilities, stake in pension, a right to be given a notice in writing by one month before termination etc. The respondents precisely want to avoid this situation and it is submitted that they must have their own way of doing it.

(3)

3. Sh.Krishna, counsel for respondents has brought to my notice a decision of the Hon'ble Supreme Court in Civil Appeal No.835/95 wherein the respondents did not work for 240 days in a year. The direction given by the CAT was that these casual labourers should be given an opportunity of re-employment in preference to newcomers even though they had not served for 240 days in a year as and when vacancies arise. Setting aside these directions, the Hon'ble Supreme Court held that -

"There is no scheme of the appellants for regularisation of employees who have completed less than 240 days of service in a year. Regularisation is ordinarily required when those in ad-hoc service are eligible and are qualified and have continued in service satisfactorily for long periods. Such is not the case here. The person who is to be regularised must be eligible and qualified for the post in which he is to be regularised. The requirement is lacking in the case of two respondents. Such regularisation must be in accordance with the relevant rules or a scheme. There is no scheme for regularisation of employees who have served for less than 240 days in a year. The order of the Tribunal is,

therefore, unwarranted. It is set aside and the appeal is allowed accordingly."

(5)

On the ground that the applicant did not complete 240 days in a year it is urged there is no case for temporary status even otherwise.

4. Learned counsel for respondents has also brought to my notice the OM dated 12.12.1994 dealing with "standardization of object heads of classification". He says professional services are given a special head and code. Payment of remuneration to the examiners, invigilators etc. for conducting examination is included in this head. The idea is to show that the applicant comes under professional and special services and the payment is not through the Pay and Accounts Office but through a special head.

5. Learned counsel for respondents further stated that there is no compassion involved in continuing the applicant as a casual labourer and she is not a casual labourer. It is a special service rendered by her. He also laid emphasis on the later thinking of the Apex Court to the effect that regularisation is not a back-door entry. For this purpose, it is not a case of protecting a poorly paid, deprived labourer whose only ability is to work through his hands and feet and who needs a special protection. If the court does not protect a

constitutional body like the Service Commission to evolve its own methods of ensuring the implementation of the examination scheme and thereby accomplishing a task within a specified date then the system gets eroded, secrecy diluted and the examination system becomes one more function of a Govt. office.

(6)

6. The applicant's counsel has defended her claim in a very forceful manner. The admitted facts are that the work is regular but intermittent and the payment is made periodically through cheques. The engagement of the applicant is not by an appointment order and there is no subsisting contract for this engagement. He stated that on the above facts which are admitted, the applicant is only a casual labourer. He cited the Full Bench decision in Rahmat-Ullah Khan & Ors. Vs. Union of India & Ors. - Volume 1, 323. The Full Bench held that if the work is intermittent and seasonal and payment is on the basis of daily wages and not on the basis of regular pay-scales, there being no regular appointment, it becomes the job of a casual labourer. A casual labourer can all the same do the skilled work and because he can do skilled work, he does not cease to be a casual labourer. Even if the payment is made by way of cheques or from a special fund, it does not take the case away from the Scheme formulated on account of various decisions for protecting the interests of casual labourers. Stating that the applicant worked for more than 240 days in each year from February 1994 to September 1996 the learned counsel for the applicant says that her pass-book is evidence of her engagement. It is only



to such type of people that the Hon'ble Supreme Court has issued directions in Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India & Ors. - JT 1987(4) SC 164 wherein the Apex Court held that "keeping casual labourers for years without regularisation is not only unfair and unjust but deprives them of certain human rights of employment". He has drawn my attention to two observations "daily-rated casual labour included three broad categories of workers, namely, unskilled, semi-skilled and skilled. Casual labour consist of labour doing technical work who hold requisite degrees and diplomas. According to the learned counsel for the applicant these observations support his claim that although the respondents have elevated the status of the applicant, she does not cease to be a casual labour.

7. Learned counsel for the applicant next cited the decision of the Hon'ble Supreme Court in Rattan Lal & Ors. Vs. State of Haryana & Ors. - (1985) 4 SCC 43 wherein the State of Haryana appointed teachers at the beginning of the academic session and terminated their services in the same year before the vacation began. This policy was deprecated. The Supreme Court held that "the policy of adhocism followed by the State Govt. for a long period has led to the breach of Articles 14 and 16 of the Constitution. The Apex Court directed filling up vacancies on a regular basis. Learned counsel for the applicant has drawn my attention to the number of Schemes drawn for conferring certain privileges

including temporary status eventually leading to regularisation. Learned counsel cited the following decisions in support of his contention that continuous adhoc service shows not a temporary need as a stop gap arrangement but indicates the need for a regular appointment. These cases are (i) Baleshwar Dass Vs. State of Uttar Pradesh - (1981) 1 SCR 449, (ii) Delhi Water Supply and Sewage Disposal Committee Vs. R.K. Kashyap - (1989) Supp.1 SCC 194 and (iii) State of Haryana and Ors. etc.etc. Vs. Piara Singh & Ors. etc. - JT 1992(5) SC 179.

(18)

S. I have carefully considered the various submissions made by the learned counsel on both sides. The distinguishing features of a casual labour are that the casual labour is not entitled to any regular post. His appointment is on daily-wages or for a specified item of work. The schemes prepared at the behest of courts in Railways, Posts & Telegraph Deptt., Income Tax Department or in any other department, have kept in view thousands of casual labourers whose only source of income and livelihood is the wages earned by them for the days' work and the fact that a number of family members are dependent on them. The second feature is the long years of service rendered by them and it is with a view to prevent exploitation and protect this class that the Hon'ble Supreme Court had spelt out certain directions in the cases of (i) Inderpal Yadav Vs. Union of India - (1985) SCC (L & S) 526, (ii) Daily Rated Casual Labour - (1987(2) SCALE 844, (iii) Delhi Municipal Corporation Karamchari Ekta Union - 1987(2) SCALE 1



370. The important point to note is the fact that these are semi-literate or illiterate. They depend exclusively on their physical labour and economically they are at the lowest rung. If they do not get wages for the day, the family starves and such people over the years have been trained to depend on the whims and fancies of the employer. The Apex Court addressed to the grievances of such employees of the Govt. who as a model employer is supposed to protect and preserve and implement the objectives of the Constitution. All the schemes are addressed to a class as a whole and to protect the larger interests of the class as a whole. It will be highly imprudent to apply these principles to individual cases or to a specialised class of cases.

(19)

9. Let us examine certain instances of Casual Labour engagement which do not require any protection. One instance, is: specific piece of work entrusted to a skilled or semi-skilled labourer. If a Govt. department asks a Carpenter or an Electrician to look after the repairs of the building whenever the need arises and pays on the basis of the piece work done, it is certainly not a case calling for any special protection or a special scheme. The worker continues to get engaged if need arises again. A carpenter or electrician cannot for that reason claim temporary status or regularisation, even though he is called to attend to piece-rate jobs regularly. Second type of cases are part-time labourers. Such part-time workers are not covered under the scheme of confirmation or

temporary status which provides such benefits only to full-time casual workers - Union of India vs. Biswambhar Das - (1996) 11 SC 341.

(20)

10. Certain seasonal nature of work or rush of work during a particular period, namely, shifting of offices, setting-up of offices, restoring the offices, etc. also require the services of labour. These are required for a specific number of days, may be a month of two; a large number of workers are called for doing a specific job. Even though the workers are engaged on daily wage basis for doing a special job they do not for that reason claim it as a precedent for other privileges. One wonders as to why when we respect the rights of a private employer, when ^{he} engages these people, we do not extend the same privileges to the Government. In all these instances furnished by me, the engagement may be as long as three months and the engagement will not recur for three more years and because of this engagement the employee cannot either individually or as a group claim precedent or privileges. If we do not observe these principles we will burden the exchequer with a wholly unwarranted liability of forcing the Government to engage the same labourer simply because he was once engaged.

11. There is a competitive labour market. The employer is entitled to pick and choose whomsoever he wants on the ground of efficiency, trustworthiness and qualification. It is only when there is a threat of

X

replacement that an employee gives his best and does not take the employment for granted. While protection of the underprivileged is certainly an important criterion, the line must be drawn somewhere to ensure efficiency in public service. I agree with Shri Krishna that there is no question of compassionate appointment in a casual labour. If the applicant is appointed on the death of her husband who was also a casual labour, there is more "compassion" in it rather than a "compassionate appointment" as the term is understood in the later decisions of the Hon'ble Supreme Court. (21)

12. A casual labourer does not have a right to a post and it is settled law that it is the exclusive and sovereign prerogative of the Govt. to create and abolish posts. No court can interfere in the same.

13. It is in the light of the above principles that we must appreciate the peculiar situation the respondents have to face. They are a constitutional body engaged in conducting examinations which in its turn promotes the constitutional rights of, fair treatment, recognition of merit and employment to those who are considered the best in a fair and strict system of evaluation. Respondent No.2 has certain in-built discretion in the matter of so organising his work as to ensure secrecy, speed and efficiency. As explained before me at the time of hearing, the Chairman cannot employ a motley crowd from the market for the very sensitive job of doing work in an examination hall. The fear of leakage,

partiality to persons who can influence the appointees and sabotage is not merely academic but has become endemic in many examinations that we notice these days. The applicant's case, therefore, must be viewed in this perspective. She is a graduate and skilled. She is employed for the task of opening and scoring because she is trusted. Scoring and totalling do not call for some extraordinary abilities but really require a certain skill and speed in output owing to repetitive nature of work. The applicant has received substantial amounts as is revealed from her pass-book for doing this job. This is a job confined to the examination period only. There is no guarantee that she will be called again. This discretion to the Public Service Commission must be respected. The principle of giving preference to a senior as against the junior and an outsider is appropriate only in the case of casual labourers doing a certain physical job and not to professional and skilled people. We cannot extend this principle to Group "C" employees, consultancy services, professionals like doctors, teachers and lawyers and a host of other instances. For instance, tomorrow a florist or a priest or musician who is called for certain functions in a Govt. department regularly and repeatedly will demand this privilege. Will it be allowed? The answer is no. Will a counsel claim this privilege because he is regularly engaged to fight a case for the Govt. For that matter a doctor, an invigilator etc. also can claim the same privilege. The answer is clearly no. Shri Krishna's argument that the applicant has to be distinguished from the crowd of labourers that throng

(22)

in the market for their daily bread is different because she does a skilled job. She is paid more than a daily wage labourer and her skill will be useful for her in any other job available at another place. It is like a Stenographer or a Data Entry Operator or a Lorry Driver. These three categories of people have been knocking at the doors of this Tribunal repeatedly for protection and for regularisation. They certainly are not to be treated as belonging to the class of casual labourers who need protection from economic exploitation. These are essentially skilled people and they can, if they are satisfied give notice and seek employment elsewhere and in a competitive market there is always the survival of the fittest. These are professional people who can render services and are in great demand. There is no need for special protection for them other than what the common law of the land grants them.

(23)

14. In the conspectus of the above facts this court must respect the discretion of the Chairman who does a difficult job of conducting an examination and for that purpose wants to operate a panel of say seventy-six to eighty persons of whom he can call at his discretion any number and if necessary discard this panel and create another panel for the purpose of conducting an examination. I have said earlier that conducting an examination is like doing any piece of work. While a private contractor or citizen is left to his own devices to think of engaging such persons as he considers fit for doing a job, there is no reason why we cannot extend the same principle to the



Public Service Commission. Tomorrow if the computers replace, as I am told they have already done, the entire system of scoring and a robot does the work of opening covers, would the people like the applicant claim any special protection simply because they were engaged once?

(2A)

15. Because a fundamental question of public importance is involved, I shall highlight two more features. It is not uncommon for students in graduate and post-graduate classes these days to get engaged in doing piece-rate work during holidays in every season or during every working day either in a hotel or in an industry or in any other organisation to supplement their resources. This feature is very common in the West and it is not uncommon in our cities. There is the concept of moonlighting i.e. compensating by additional remuneration for doing supplemental work in addition to one's normal duties. Do these people need any protection? In my view they do not. We will be misapplying the law laid-down by the Hon'ble Supreme Court which is essentially meant for the large class of labour who need protection in order to survive and to prevent exploitation from either the unscrupulous or the callous or from those organisations like the Government who do not show a human face in dealing with their predicament. The applicant's case does not come in this category. The following categories do not come under the category of Casual Labourers as



understood for the purposes of the Schemes evolved by the Ministry of Personnel and various other departments like P&T, Railways etc. -

(25)

- (i) Part-time Labourers,
- (ii) Professional and skilled workers,
- (iii) Piece-job workers,
- (iv) Seasonal workers,
- (v) Short-term contract workers,
- (vi) Workers rendering specialised services,
- (vii) Group "C" employees and above.

The applicant's service can be classified under the head part-time, seasonal, piece-rate job and specialised service. I, therefore, dismiss this OA and vacate the interim stay granted by this Court on 21.01.1998.

16. No costs.

Karan Singh

(N. Sahu)
Member (A)

10/3/98

/Kant/