

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1789/96
T.A. No.

1998

26

DATE OF DECISION 4-3-98

Sh. Yashpal Singh & Ors. Petitioner
Sh. B. B. Raval Advocate for the Petitioner(s)
 Versus
UOI & Ors. Respondent
Sh. V. K. Rao Advocate for the Respondent(s)

CORAM

The Hon'ble ~~Mr.~~ Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr. S. P. Biswas, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal?

[Signature]
(S. P. Biswas)
Member (A)

Cases Referred:

1. Mukesh Bhai Chota Bhai Patel Vs. Jt. Agricultural and Marketing Officer, GOI and Anr. (1994 SCC (L&S) 126)
2. State of UP Vs. Ajay Kumar (JT 1997 (3) SC 219)
3. State of H.P. Vs. Suresh Kumar Verma, (JT 1996 (2) SC 455)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1789/96

New Delhi, this the 4th day of March, 1998.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

1. Sh. Yashpal Singh,
S/o Sh. Siriya,
R/o Qr.No.833,
Sector-2, Type-II,
Sadiq Nagar,
New Delhi.
2. Sh. Jagan Nath Mahto,
S/o Sh. Faguni Mahto,
R/o I-59, Chirya Colony,
IARI Pura, New Delhi-12.
3. Sh. Vijay Kumar,
S/o Sh. Ram Saran,
R/o T-650, L-IV-E,
Gali No.21-A,
Baljeet Nagar,
New Delhi-8.

..... Applicants

(through Sh. B.B. Raval, advocate)

versus

1. Union of India,
through the Director General,
Council of Scientific and
Industrial Research,
Rafi Marg,
New Delhi.
2. The Head,
Human Resources Development
Group, CSIR Complex,
Dr. K.S. Krishnan Marg,
Pusa, New Delhi-12.

..... Respondents

(through Sh. V.K. Rao, advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

The main issue that comes for sharp focus
in this O.A., amended subsequently, is what is the
legal right of daily rated casual workers (DRCW for
short) and in what law they find an enforceable right
for reinstatement, temporary status and

regularisation as claimed by them. The factual matrix giving rise to the filing of this application is as hereunder:-

2. Of the three applicants, all belonging to scheduled caste community, applicants No.2 and 3 are aggrieved by the arbitrary disengagement and applicant No.1 apprehends a similar unfavourable treatment. They were all engaged in January/February 1996 as DRCW and two of them (applicants No.2 & 3) continued to working till 14.8.96 when their services were verbally terminated. Reliefs sought for in the original application filed on 21.8.96 were in terms of providing temporary status to the applicants, regularising them in due course of time and direction to the respondents not to disengage the services of applicant No.1 and take applicants No.2 & 3 back on the job. Applicants allege that pursuant to serving of the "DASTI" notice as ordered by the Tribunal on 23.8.96, ^{respondents} consequently got unduly provoked and with revenge ordered applicant No.1 not to turn up for duty from 24.8.96. Consequently applicants had to seek amendment of OA through MA-1723/96 to bring out additional details for the consideration of the Tribunal. The said amendment was intended to indicate that cases of the applicants got prejudiced only because they had approached this Hon'ble Tribunal. Otherwise, they had reasonable opportunity to get temporary status and regularisation in near future.

3. To add strength to the claims of the applicants, Shri B.B. Raval, learned counsel for the applicants would contend that (i) all the applicants were sponsored by Employment Exchange to work under respondent No.2; (ii) they were working with sincerity and to the utmost satisfaction of the senior officers; and (iii) had rendered more than 6 months continuous services as DRCW. Their disengagements followed by replacements by fresh hands are bad in the eyes of law. Respondents, on the contrary, would submit that the applicants were engaged on "contract basis" in connection with a project work involving examination conducted in the months of December, 1995 for recruitment of Lecturers and Junior Research Fellows. The work assigned to the applicants was confidential in nature and that the conduct of applicants No. 2 and 3 in carrying out the orders relating to bringing certain "Attendance Registers" from examination unit No.3 located in third floor was found to be questionable. It was under these circumstances that the competent authority, for reasons recorded in writing, decided that continuation of the applicants in the said "contract job" would not be in the interest of the organisation. As a result, services of applicants No.2 and 3 were terminated on 13.8.96, whereas termination of first applicant's services was ordered on 23.8.96 well before the DASTI notice could be served.

4. The law that would govern re-engagement, conferment of temporary status and regularisation of casual labourers is now well settled.

4A. As far as casual labour is concerned, there is no termination of service or re-instatement in the true sense of the appointment. As long as casual labour (by reason of status) has no legal right to hold a civil post, he has no right to claim reinstatement. "Post" and "reinstatement" are complementary. It is also settled in law that casual engagement does not entail any benefit automatically, only conferment of benefit under a valid scheme or an order of regularisation can confer such rights. If any authority is needed for this proposition, it is available in Mukesh Bhai Chota Bhai Patel Vs. Jt. Agricultural and Marketing Officer, GOI and Anr. 1994 SCC (L&S) 126.

4B. We do not find any scheme of the respondents for offer of temporary status for those who have completed less than 240 days of service as is the position with the applicants herein. Regularisation is permissible only when persons in service are eligible, qualified and have continued satisfactorily in service for stipulated number of days. Such is not the case of the applicants in this O.A. An employee can be regularised only against a vacant post. This very requirement is lacking in the case of the three applicants.

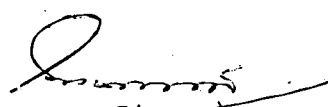
4C. Even assuming that two views are possible with reference to the conduct of the applicants herein, Tribunal does not sit as an appellate authority and decide the disputed matter unless the decision taken by the authority is totally perverse or arbitrary. Applicants claim that they are daily rated casual workers. The question here is whether this was part of the terms of appointment? We have not been shown any document in this respect. However, their services were found lacking in terms of confidentiality.

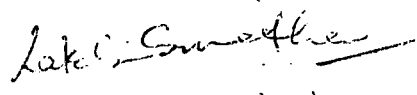
5. Even if it is admitted that all the three applicants were initially engaged on daily wage/casual basis, while examining the case of daily wage workers in an identical situation in the case of State of U.P. Vs. Ajay Kumar (JT 1997(3) SC 219), the Apex Court has held that daily wage appointment is obviously in relation to contingent establishment in which there cannot be any post but it continues so long as the work exists. Under these circumstances, Division Bench of the U.P. High Court was held to be clearly in error in directing the applicants therein to regularise the services of the respondent to a post as and when vacancy arises and to continue him until then. What is crucial is that appointment on daily wage basis is not an appointment to a post according to rules (emphasis added). The project in which applicants were engaged had come to an end and therefore the services of the applicants had to be terminated for non-availability of work. Tribunal cannot give any direction to re-engage them in any

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other work or appoint them against existing vacancies. Otherwise, judicial process would become another mode of recruitment, dehors rules (See State of H.P. Vs. Suresh Kumar Verma and Another JT 1996(2) SC 455). The applicants have also failed to show that they have been replaced by other casual labourers which justifies any interference in the matter. We have also considered the other submissions made by the applicants.

6. In the light of the discussions aforesaid, the application is devoid of any merit and deserves to be dismissed. We do so accordingly but in the circumstances without any order as to costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

/vv/