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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXXX No. 2204/1996

Decided on: 28.2.97

Shri Brij Lal Belwal 2 DYSApplicant(s)

(By Shri Yogesh Sharma Advocate)

Versus

U.O.i. & OthersRespondent(s)

(By Shri B. Lall Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

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


(K. MUTHUKUMAR)
MEMBER (A)

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2204 of 1996

New Delhi this the 28th day of ~~March~~ February, 1997

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Brij Lal Belwal
S/o Shri Brahma Nand Belwal,
R/o G-610, Srinivasपुरi,
New Delhi-110 065.
2. Ranghu Kumar
S/o Shri S.R. Sughar,
R/o 9/2-A, Kalibari Marg,
New Delhi.
3. Shri Shyam Behari
S/o Shri T. Mathur,
R/o C-97, Krishi Vihar,
New Delhi-110 048.

...Applicants

By Advocate Shri Yogesh Sharma

Versus

1. Union of India through
the Secretary,
Ministry of Law, Justice & Company
Affairs,
Government of India,
Shastri Bhavan,
New Delhi.
2. The Regional Director (NR),
Department of Companies Affairs,
10/499-B, Alleganj,
Khalasi Line,
Kanpur-208002.
3. The Registrar of Companies,
NCT Delhi & Haryana,
Paryavaran Bhawan,
B-Block,
UUnd Floor,
CGO Complex,
Lodhi Road,

New Delhi-110 003.

..Respondents

By Advocate Shri B. Lall

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This is a second round of litigation by the three applicants here who are aggrieved that the respondents have terminated their services as casual labourers although they claim to have worked for more than 206 days in a year from 1993 to 1994 onwards and, therefore, would be entitled to regularisation. The applicants filed O.A. No. 2149 of 1995 making similar prayer for their reengagement in preference to juniors and freshers and also for considering them for grant of temporary status/regularisation. After hearing the parties, the application was disposed of on 19.12.1995 when counsel for either side agreed that the application could be disposed of with appropriate direction for consideration of the applicants for engagement in preference to juniors and freshers and for grant of temporary status in accordance with the Scheme and the extant rules. In the light of that, the aforesaid O.A. was disposed of with the following directions:-

" We dispose of this application at the admission stage itself directing the respondents to consider reengagement of the applicants in preference to juniors and freshers and persons with less length of casual service as and when the casual work is available and consider their case for grant of temporary status and regularisation in accordance with the Scheme and the extant rules in that regard".

The applicants moved a Contempt Petition which was

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dismissed giving the opportunity to the applicants to challenge the order passed by the respondents.

2. In pursuance of the above directions, the respondents have issued the impugned orders dated 3.10.1996 individually in respect of the three applicants at Annexures A-1 and A-3 respectively. It is stated that the applicants were reengaged on 3.6.1996 as per the averments. The impugned orders have been issued by the respondents to the applicants intimating that they do not fulfil the norms prescribed for grant of temporary status and, therefore, would not be entitled to the conferment of temporary status. In the impugned orders, the respondents have intimated that the applicants have not rendered 206 days of continuous service in a year as required under the Scheme and the regulations thereunder. Accordingly, they have held that the applicants were not entitled to be conferred temporary status. Being aggrieved, the applicants have moved this application with a prayer to quash the impugned orders.

3. The main contention of the applicants is that they have rendered more than 206 days in a period of 12 months in various years between 1993-94 and 1995-96 and were entitled to be considered for temporary status. They also contend that the respondents had reengaged them by the order dated 16.5.1996 ~~with~~ actually specifying the period for such reengagement so that they could be disengaged as and when they chose at any time. They also contend that the respondents

have engaged them by giving the artifical breaks in service. Relying on judgments in **Veer Pal Singh & Others Vs. Union of India & Others, 1996(2) ATJ 128** and **Mahinder Singh & Others Versus U.O.I., 1995(2) ATJ 274.**, the applicants claim that if a person has completed 206/240 days as the case may be, they would be entitled to temporary status and they have also pleaded that in number of cases, the artifical breaks were directed to be condoned for granting temporary giving status. They have also submitted that/ artifical breaks in service to delink the continuity of service in order to make the casual labourers ineligible, has not been appreciated by the courts.

4. The respondents have given the details of the service rendered by the applicants in the impugned orders separately. They have averred that, in terms of the Scheme governing the casual labourers for grant of temporary status, two conditions have to be fulfilled:

- (i) a casual labourer is required to put in 206 days in a 5 days office in at least one year; and
- (ii) that the service should be continuous.

In other words, the service should be without any break or interruption. From the details of the service given in respect of each candidate, there had been breaks in service from time to time till their services were last terminated in October, 1995 prior to their reengagement on 2.6.1996 as per the directions of the Tribunal. These breaks were not in the nature of technical breaks but applicants themselves had

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absented on their own volition and they were not entitled to any leave for regularisation of this absence. Besides, the respondents have not received any clarification from the Department of Personnel that broken periods of service be taken into consideration for grant of temporary status under the Scheme. They contend that these applicants were engaged only for seasonal work and they were disengaged from time to time. In the light of this, their services had already been terminated on 11.10.1996 as there was no work. Status quo, in respect of their continuance was ordered to be maintained subject to availability of work. In view of these averments, the respondents have submitted that the applicants have no case and the application should be rejected.

5. We have heard the learned counsel for the parties and have perused the record.

6. The Scheme for grant of temporary status and regularisation was introduced by the Ministry of Personnel and Training vide their O.M. dated 10.09.93. This Scheme was applicable to the casual labourers in the Employment of Ministry/Departments other than Ministry of Railways, Department of Telecommunication and Department of Posts. In the case of the applicants also, the aforesaid circular would be relevant.

Para 4.(i) of the circular reads as follows:-

"Temporary status

Temporary status would be conferred on all casual labourers who are in the employment on the date of issue of this O.M. 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 offices observing 5 days week)".

From the details of work performed as given in the impugned orders by the respondents, it is clear that the applicants were in employment of the respondents on the date of issue of the O.M. dated 1.9.1993. Admittedly, the offices concerned in their case are observing 5 day - week. Although the aforesaid provision stipulates that the casual labourers should have rendered continuous service of at least one year, this is further clarified by the expression "which means that they must have been engaged for at least 206 days". From this, it does not directly flow that the period of 206 days should be rendered continuously without any break. From a plain reading of this provision, it appears that what is required to be seen is whether the casual labourers have rendered 206 days of service in at least one year. In other words, the actual engagement of the casual labourers should be for a period of 206 days in a year. In a year leaving aside the weekly holidays on Saturdays and Sundays, the total number of days available will be about 261 days assuming 52 weeks a year. So the actual engagement is possible only upto a maximum of 261 days. From the words used in para 4.1/2 which that means/they have been engaged at least for a period of 240 days or 206 days as the case may be", it would be reasonable to infer that out of 261 days available for engagement, the applicants should have been engaged for at least 206 days. That this engagement should be continuous without any break, cannot be directly

inferred from the above provision. If the intention is that casual labourer should have rendered a continuous spell of 206 days without any break, this should have been specifically clarified. Prior to the aforesaid scheme which came into effect from 1.9.1993, there was ^a scheme for appointment of casual labourers appointed through Employment Exchange and possessing experience of minimum 2 years continuous service as casual labourer for appointment to the post in the regular establishment. Even at that time also, it was clarified that a casual labourer may be given the benefit of 2 years of continuous service as casual labourer if he has put in 240 days (206 days in the case of the office observing 5 days week) of the service as a casual labourer including "broken periods of service during the each of the 2 years of service referred to". (Swamy's Book on Establishment and Administration (Manual) page 208 and 209 - O.M. dated 26.10.1984). So the intention that all along seems to be if a casual labourer has been engaged for a period of 206 days in a year, then he should be considered for grant of temporary status in terms of the aforesaid Scheme. From the details given by the respondents themselves in their impugned orders, applicant No.1 was engaged for 216 days in 1993-94 and 278 days in 1994-95 (this would indicate that the engagement was even in excess of 261 days ^{holid ays} which should have included as well). In the case of applicant No.2 he was engaged for 212 days in 1993-94 and 275 days


in 1994-95 and applicant No.3 was engaged for 239 days in 1992-93 and for 266 days in 1994-95. From this, it would appear that applicant Nos. 1 and 2 had been engaged for more than 206 days in the years 1993-94 and 1994-95 and applicant No.3 had been engaged for more than 206 days in the years 1992-93 and 1994-95 and should have been considered eligible for grant of temporary status. The respondents have stated that they were engaged only during summer season is not borne out from the details given in the impugned order of the respondents as the applicants were engaged outside the summer season also say September, November and December. From this it would appear that work was available to them during these periods also. It is, therefore, evident that the applicants had served for a period of 206 days in a year and in similar circumstances, reliefs were granted for consideration for grant of temporary status in **Veer Pal Singh & Others (Supra)** and **Mahinder Singh & Others (Supra)**.

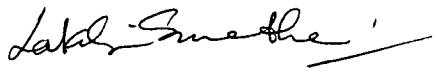
7. In the light of the above discussion, this O.A. is allowed and the respondents are directed to reengage the applicants in preference to juniors and freshers, subject to the availability of work and also to consider their case for grant of temporary status and pass appropriate order in this behalf. The applicants, however, shall not be entitled to any back wages for the period during which they were

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kept out of service. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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