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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2804 of 1997

New Delhi, this the 20th day of March, 1998

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

Uma Shankar, S/o Shri Kanta Prasad Singh, presently residing at House of Om Prakash, Gali No.2, Kotla, Delhi - 110 091

- APPLICANT

(By Advocate Shri S.K.Gupta)

Versus

1. Union of India, through Secretary, Ministry of Finance, North Block, New Delhi.
 2. Commissioner of Income Tax, Meerut (U.P.).
 3. Deputy Commissioner of Income Tax, Income Tax Office, CGO Building, Ghaziabad (U.P.).
- RESPONDENTS

(By Advocate Shri V.P.Uppal)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The applicant seeks temporary status in accordance with Department of Personnel & Training Scheme dated 10.9.1993.

2. The applicant was initially employed as a casual labour on 16.9.1993 and continuously worked with respondent no.3 up to 9.4.1994. Five vacancies had arisen with the respondents thereafter. He was one of the sponsored candidates from the employment exchange. He was considered and selected for one of the five vacancies on 13.7.1994. He continuously worked upto 28.11.1995. He was dis-engaged verbally. His claim is that he worked for 225/240 days in the years 1994 and 1995. Therefore, he
- [Handwritten signature]*

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seeks temporary status in accordance with the Scheme. He relies on a decision of this Court in the case of Kiran Kishore Vs. Union of India, O.A. No.1696/1995. The decision states that regardless of the cut off date in the Scheme, if the condition about the number of working days is fulfilled the benefit of the scheme should be extended.

3. After notice, the respondents contend that in terms of the order of this Court in C.A.No.23/96, Uma Shankar Vs. Chief Commissioner of Income-tax, Kanpur, decided on 20.11.1996 the question of conferring temporary status on the applicant would arise after his re-engagement. As there is no vacancy and the applicant has not been re-engaged, there is no cause of action. It is next stated that the order of this Court dated 20.11.1996 is based on consent.

4. The learned counsel for the applicant contends that there is no res judicata in any consent order.

5. I have perused the order dated 20.11.1996. It only states "In the event of the applicant's re-engagement he may work out his rights in accordance with the extant rules and instructions on the subject." That is precisely what he wants to do now. The concept of temporary status is independent of re-engagement. It is only posited on one conditionality - the casual labour must complete certain period of work in the time span of one year.

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Admittedly that condition has been satisfied. No Court order can be read as nullifying the Scheme or a legal provision. Even if the casual labour is conferred a temporary status, his services can be dispensed with if there is no work or if his performance is not satisfactory. An order of temporary status can be passed even after the services are dispensed with. Even after conferring temporary status there is no guarantee that he will continue to be employed. Continuous employment depends on availability of work and his satisfactory performance. I do not see what the grant of temporary status has to do with his re-engagement. I have already clarified following the order of this Court in the case of Kiran Kishore, that a casual labour need not be in employment on the date of issue of this O.M. It is enough if he has rendered a continuous service for at least one year which means he has been engaged for a period of at least 240/206 days in the year. This aspect has not been disputed in the counter. In view of the above, I direct the respondents to consider the applicant's case and pass an order of temporary status within four weeks of the receipt of a copy of this order. The O.A. is accordingly allowed. No costs.

Narasimhaiah
(N. Sahu) 29/3/98
Member (Adminv)

rkv.