

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 544/1997
T.A. No.

199

DATE OF DECISION 18.11.1997

Gopal Krishan

Petitioner

Ms. Rachna Srivastava

Advocate for the Petitioner(s)

Versus

Respondent

Chief Election Commr. & Anr.

Rajendra Pandita

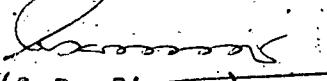
Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr.

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


 (S.P. Biswas)
 M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.544/1997

New Delhi, this 18th day of November, 1997

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

Shri Gopal Krishan
B183, Janakpuri
Near Bindapur, Uttam Nagar, N.Delhi .. Applicant

(By Ms. Rachna Srivastava, Advocate)

Versus

1. Chief Election Commissioner
Nirvachan Sadan, New Delhi
2. Electoral Registration Officer
Old Stephan College Building
Kashmere Gate, Delhi .. Respondents

(By Shri Rajendra Pandita, Advocate)

ORDER(oral)

The short question that falls for determination is whether an employee, appointed on daily wage basis, can legally claim re-engagement/regularisation in service.

The admitted facts are that the applicant was: (i) appointed by A-1 order on 7.10.94 on daily wage basis for a project work, (ii) that he was not given any temporary status, (iii) that he was not holding any civil post and (iv) that his initial appointment was not according to Rules.

2. Learned counsel for the applicant made strenuous efforts to justify re-engagement/regularisation of the applicant on the basis that the work/project still continues and that juniors to the applicant have been engaged subsequently. While contending that the respondents have still lot of work in the area of electioneering, the learned counsel sought to claim re-appointment on the strength of the following decision of the Hon'ble Supreme Court:

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"Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop the request for regularisation in service has to be considered"

See: Jacob M.Puthuparambil Vs. Kerala Water Authority (1991) 1 SCC 28, 41, 42

3. In the counter, the learned counsel for the respondents submitted that the OA is badly hit by limitation and cannot also be sustained because of non-joinder of necessary parties. To lend support to his contention in respect of limitation, the learned counsel for the respondents cited the decision of the Apex Court in the case of S.S.Rathore Vs. State of MP 1990 SCC(L&S) 50 to say that the case no legs to stand. He also cited the decisions of this Tribunal in OAs 16252/95, 700/96 and 1653/95 decided on 17.10.96, 8.4.96 and 20.2.96, respectively, wherein reliefs claimed on similar lines have been declined. Even the RA in OA 1653/96 was also dismissed on 13.5.96. As regards fresh hands having been engaged, the counsel would submit that in the absence of necessary details respondents cannot lay their hands on the allegations made.

4. Heard the rival contentions of learned counsel for both parties.

The law on the issue of limitation has been laid down recently by the Apex Court in the case of P.K. Ramachandran Vs. State of Kerala & Anr. JT 1997(8)SC 189 decided on 23.8.96. It has been held that the court has to record in writing that the explanation offered

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for the delay was reasonable and satisfactory which is a pre-requisite for condoning delays. In the present case, the stand of the respondents against limitation cannot be accepted. The applicant did make repeated attempts but those did not evoke any response from the respondents. On scrutiny of records, I am satisfied that the delay in approaching this Tribunal was justifiable. I find that the applicant was engaged on daily wage basis (A-1) pursuant to advertisement dated 14.6.94 for performing the work of Reception Assistant/Helpers at different polling stations for only 3 months. Obviously, the project in which the applicant was working had to come to an end and therefore the respondents' action in terminating the services of the applicant cannot be faulted.

5. The law that has to be followed in such cases has been laid down by the Hon'ble Supreme Court in the cases of State of H.P. Vs. Suresh Kumar Verma & Anr. JT 1996(2) SC 455, State of UP & Ors. Vs. Ajay Kumar JT 1997(3) 219 decided on 17.2.97 and Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors. 1997(2)SCSLJ 24 decided on 26.3.97. The law enunciated in these cases stipulates that appointment on daily wage basis is not an appointment to a regular post in accordance with rules laid down on the subject. It has also been held that the court/Tribunal cannot give any direction to re-engage such employees in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment, dehors rules. Daily wage appointment is obviously in relation to contingent establishment in which there cannot exist any post and it continues so long as the

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work exists. While dealing with the case of a daily wage worker, the Apex Court, in the case of Ajay Kumar (supra), held that the Division Bench was clearly in error in directing the appellant to regularise the services of the respondent therein to the post as and when the vacancy arises and to continue him until then. Such a direction given in the backdrop of the facts was considered illegal.

6. As far as daily wage casual worker is concerned, there is no termination of service or re-instatement in the true sense of the term. As long as a daily wager (by reason of status) has no right to hold a post, so long he/she has no right to claim re-instatement. "Post" and re-instatement are complementary. Benefits of re-instatement/regularisation can be conferred only under a valid scheme. When the Government has no need for a post, any direction of the court/Tribunal for re-engagement would be only erroneous.

7. In the background of the aforementioned law laid down on the subject, the application fails on merits and is accordingly dismissed but in the circumstances without any order as to costs.



(S.P. Biswas)
Member(A)

/gtv/