

(16)

Central Administrative Tribunal
Principal Bench: New Delhi

OA 748/97.

New Delhi this the 8th day of October 1997

1. Pramod Kumar
S/o Nand Lal
R/o D-16 Mansarovar Garden
New Delhi.
2. Anil
S/o Ram Kishan
R/o 69/872
Panhchkuyan Road
New Delhi.
3. Tayub Khan
S/o Ayub Khan
R/o M-209
Sewa Nagar
New Delhi.
4. Ramesh Chander
S/o Same Singh
R/o 8/289 East Gokulpuri
Harijan Basti
Lodhi Road
New Delhi.
5. Mohan Singh
S/o Inder Singh
D-35/1 Moti Bagh
New Delhi.
6. Sunil Kumar
S/o Ramphool
R/o A-170 Minto Road
New Delhi.

...Applicants.

(By advocate: Mr A.K.Bhardwaj)

Versus

Union of India through

1. The Secretary
Ministry of Human Resources Development
Department of Women & Child Development
A-Wing, Shastri Bhawan
New Delhi - 110 007.
2. Section Officer
Ministry of Human Resources Development
Department of Women & Child Development
General Section
Shastri Bhawan
New Delhi.

...Respondents

(By advocate: Mr K.R.Sachdeva)

O R D E R (Oral)

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

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In this OA, applicants are aggrieved against the dis-inclination of the respondents to confer temporary status upon them on the ground that they did not complete 206 days of casual service on the date of issuance of OM dated 10.9.93.

2. Brief facts are that sponsored by the Employment Exchange, the applicants were initially engaged for a period of 3 months w.e.f. 1.5.1995 and their enagement was extended till 8.1.1996. Admitted facts are that they worked only upto 31.12.1995 and the extension was only upto that date. The applicants filed an OA 274/96 whereupon this Tribunal directed that the respondents shall communicate the decision on temporary status and regularisation within a period of 2 months from the date of receipt of that order dated 23.12.96. The next direction was that if the respondents had work of a casual nature and intended engaging casual workers, then they should also consider the claims of the applicants and give them preference to freshers and outsiders in accordance with the Scheme. The case of the applicants is that each of them had worked for 245 days. They, therefore, claimed temporary status, but respondent No.2 issued the impugned OM dated 17.2.97 rejecting their claim on the ground that the Scheme is applicable to casual labourers who were in employment and who had put in 1 year of service on 10.9.1993. Learned counsel for the applicant relied on a decision in Kiran Kishore V. UOI in OA 1696/95. In that case, the Tribunal concluded that the Scheme is to be applied to persons who fulfill the specific eligibility criteria of length of service at any time even after 1.9.1993. The learned counsel has

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pointed out that the view laid down by the Division Bench in Kiran Kishore's case was followed in several other cases. He cited a recent decision of a Single Member Bench in OA 1073/97 dated 4.9.97 and a Division Bench's decision in OA 1398/96 dated 27.9.96. Learned counsel for the applicant accordingly prays not only temporary status but eventual regular absorption as Group-D employees on availability of vacancies.

3. Learned counsel for the respondents vehemently urges that the view taken by the Tribunal in Kiran Kishore's case is not acceptable to the Ministry of Personnel. He makes two/three important submissions. The first submission is that the O.M. was initiated by the Ministry of Personnel and in all fairness any clarifications on this O.M. should have come out of the Ministry of Personnel alone. It is the Government of India who as a policy maker lay down certain proceedings for grant of temporary status and those proceedings and conditions are mostly complied with before the benefits of the Scheme are allowed to casual labourers. He thereafter cited the case decided by the Ernakulam Bench of the CAT K.N. Badrudeen & others V. U.O.I. and others in OA 907/96. The question there was again whether the date of issue of the notification is a restriction should be adhered to scrupulously and whether the subsequent period of service rendered after the date cannot be considered. In that case, the Tribunal directed the Ministry of Personnel to issue suitable clarifications. The clarifications were issued on

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26.2.97 in which the Ministry of Personnel clarified that temporary status would be conferred on all casual labourers who were recruited on the date of issue of the O.M. namely, 10.9.93 and had put in at least one year of continuous service. This was pursuant to the decision in Raj Kamal's case pronounced on 16.2.1990. As the direction in Raj Kamal's case was specific and intended to cover only those casual labourers who were recruited prior to 7.6.88, the date 10.9.1993 was not an arbitrary date. Accordingly, the Ministry was of the view that there can be no relaxation of the date and the conditions stipulated in that Scheme should be complied with. When the matter was taken in a CP proceedings, the Ernakulam Division Bench had held that the respondents had by and large complied with the directions and dismissed the CP. This, according to the learned counsel, is a judicial recognition of the stand taken by the DoPT. The next submission made by Mr K.R.Sachdeva was that the grant of temporary status and other benefits to casual labourers are not only policy decisions but also involves financial implications and, therefore, the Scheme must be understood in the correct perspective. Enlargement of the scope of the Scheme by judicial interpretation will only add to Government's financial responsibilities. He sought permission of the Court to file an affidavit of the Ministry of Personnel wherein the notings in this regard are brought on record. He further said that some doubt has been created by the proceedings before the Ernakulam Bench about the correctness of the view in

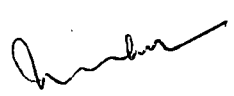
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Kiran Kishore's case and, therefore, his suggestion is that this should also be referred to, if considered fit, a Full Bench.

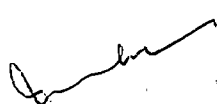
4. I have carefully considered the rival submissions. This matter relating to the cut-off date given in the Scheme has been referred to, discussed and decided by several decisions of the Principal Bench. Those decisions are as under:

- (i) CP 345/94 in OA 346/94
- (ii) OA 169/97
- (iii) OA 2013/89
- (iv) OA 1298/89

5. All the Schemes based on Inderpal Yadav's case, Daily Rated Casual Labourers' case, and Raj Kamal's case are intended to confer certain sense of security on casual labourers who have rendered certain period of service and hope to continue as long as work is available. The aim and object of each of the Scheme are to see that those casual labourers who have rendered work should be continued and not disengaged as long as work is available. The latest pronouncements of the Supreme Court are to ensure that there should be reasonable safeguards to the interests of casual labourers and they should not be at the mercy of the employer who can unceremoniously throw them out in a whimsical manner. In Ghaziabad Development Authority Vs. Sri Vikram Choudhary & Others JT 1995 (5) SC 636, the Supreme Court



laid down categorically that no casual labourer shall be turned out as long as work is available. Even if dis-engaged, they shall be preferred to freshers and outsiders as and when work is available. Employers should see that even if work is not available in a particular department whether they can be adjusted in any other branch where work is available. Employers shall maintain a register of such employees and as and when in future work is available, they shall call those retrenched casual labourers on seniority basis. Even in disengagement, the principle of "last come first go" shall be adopted. The philosophy behind this method outlined by the Supreme Court is only to protect the interests of casual labourers and not to throw them out in a capricious manner. Now coming to the Scheme and the O.M. issued by the Ministry of Personnel, this Tribunal had stated in the above decision that casual labourers engaged prior to this date and continuing after this date and casual labourers who have not completed the requisite period before this date shall also be considered if the total length of service rendered by them, namely, 206 days in one completed year of service, is satisfied. Kiran Kishore's case is an extension of this principle. As held by the learned judge in Ernakulam Bench (Supra), there is no special sanctity about the date except that it was the date on which the Scheme came into force. Fixing a date arbitrarily has been found illegal by the Supreme Court in several cases including the case of D.R.Nim (AIR 1967 SC 1301) and it has no sanctity whatsoever. We have to see initially what benefit it




confers and what is the object when a Scheme of this type is initiated and whether any interpretation given to this Scheme would advance the said purpose and suppress the disability it is intended to remedy. That is exactly what this Court is supposed to do. In this case, learned counsel for the applicant repeatedly urged that the decision in Kiran Kishore's case has been followed in other cases and in this case also the same ratio should be followed. Any other interpretation will defeat the very purpose of the Scheme. Does it mean that any casual labourer employed after the date of the Scheme can be engaged and disengaged at the sweet will of a departmental authority? The concept of temporary status is only a recognition that having put in a specific length of service, a contingent employee has to have some protection. His services cannot be terminated without notice and he shall be considered for eventual absorption in a Group-D vacancy. These safeguards cannot wither away after a cut-off date. Employees putting in 240 days of service in one complete year cannot cease to enjoy this protection. The Government need not again await a judicial pronouncement to formulate another Scheme for employees working after 10.9.93. There is no need for the Court always to remind the Government once in every interval to formulate a Scheme. As observed by the Supreme Court in Ghaziabad case (Supra), the purpose is to see that as long as casual labourers are discharging their duties efficiently and to the satisfaction of the employer and as long as work is available, they shall not be disengaged. The procedures for temporary status

for

leading to eventual absorption are built in safeguards to secure a casual labourer's future. I do not see any justification to refer this to a larger bench and there is no need to seek fresh evidence by way of an additional affidavit.

6. Respondents are directed to confer temporary status to the applicants within 4 weeks from the date of receipt of this order. Impugned OM is accordingly quashed.

7. The conditions laid down in the Scheme shall be scrupulously observed in cases of absorption to Group-D. However, there is no merit in the claim for grant of back wages. If the applicants have not worked for whatever reason, they shall not get back wages. OA is partly allowed.


(N. Sahu)
Member (A)