

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 770 of 1997

New Delhi, this the 24 th day of September, 1997

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

1. Shri Abhay Singh
S/o Sh. Chahdgi Ram
R/o E-160, Yadav Nagar,
Samaypur Badli, Delhi

2. Shri Rama Kant
S/o Shri Nathu Ram
R/o D-591, Mandir Marg,
Gole Market, New Delhi

3. Shri Padam Singh
S/o Shri Ram Sarup
R/o 1-1/20, Phase I,
Budh Vihar Colony,
Avantika Rohini
Delhi

...Applicants

(By Advocate : Shri D.R. Gupta)

Versus

1. The Chief Controller of Accounts
Principal Accounts Office,
Ministry of Health & Family Welfare,
Room No.303, D- Wing,
Nirman Bhawan,
New Delhi

2. The Senior Accounts Officer,
Principal Accounts Office
Ministry of Health & Family Welfare
Room NO.313, D-Wing,
Nirman Bhawan
New Delhi

...Respondents

(By Advocate : Shri K.C.D. Gangwani)

JUDGMENT

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

All the three applicants were engaged on 15.05.1996 and their services were terminated by the employer by a verbal order on 31.03.1997. Annexure-IV (page 16 of the counter) exhibits the number of days the applicants worked during working days and holidays separately. Shri Gangwani, learned counsel for respondents, states that the work rendered

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during holidays for which wages had been paid cannot be aggregated with the work rendered on normal working days. This contention is unacceptable at the outset. The work rendered during holidays and on working days are to be counted and aggregated. There is no justification for ignoring the work rendered on holidays. Applicant No.1, Shri Abhay Singh worked for 217 days, Applicant No.2, Shri Rama Kant worked for 217 days, and Applicant No.3 Shri Padam Singh worked for 225 days. The claim in this OA is that the oral termination dated 31.03.1997 is not in accordance with law and the respondents be directed to re-engage them as casual workers and grant them temporary status from the date they became eligible on completion of 203 days of service. The prayer is also for a direction to consider them for regularisation against the existing vacancy of Peons. Learned counsel for the applicant, Shri D.R. Gupta cited the decision of the Supreme Court in Ghaziabad Development Authority Vs. Shri Vikram Chaudhary & Ors., JT 1995(5) SC 636 and submitted that it is not open to the respondents to terminate the services of the applicants employed on daily wage basis against the regular posts so long as they have work on hand. Since the principles laid down in this case apply to the OA before me, I shall extract the placitum:

"What the learned Judge appears to have intended to lay down is that so long as the appellant has work on hand, the appellant has no power to terminate the contingent employees engaged on daily wages and that in the event the appellant needs to terminate their services the principle of last come first go should be followed and in the event of there being need for re-employment, preference be given to the displaced respondents. The

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observation made by the learned Judge is consistent with the well-established principles of natural justice and equity, justice and good conscience. Therefore, the learned Judge had rightly extended those principles with regard to the persons employed by the appellant on daily wages.

It is stated that by implication of the order there is need for the appellant to keep engaging the respondents even though there are no projects on hand. That apprehension also does not appear to be correct. The appellant needs to take the services of the persons according to the requirement in the projects on hand. On completion of the existing projects in which the respondents are working, if the appellant undertakes any fresh project, instead of taking the services of fresh hands at the place of the new project, the appellant needs to take the services of the existing temporary daily wage respondents. In the event of the appellant not having any project on hand, the obligation to pay daily wages to the respondents does not arise. However, the appellant shall maintain the order of seniority of the daily wage employees and shall take the services of the senior most persons in the order of seniority according to the requirement of work.

Since they are temporary daily wage employees, so long as there is no regular posts available for appointment, the question of making pay on par with the regular employees does not arise. But the appellant should necessarily and by implication, pay the minimum wages prescribed under the statute, if any, or the prevailing wages as available in the locality."

It is submitted that the respondents have work on hand as is evidenced by their letter to Regional Employment Officer dated 02.04.1997. It is next urged that as a sequel to the interim orders dated 04.04.1997 directing the respondents to consider the applicants in preference to juniors and outsiders without insisting upon their being sponsored from Employment Exchange in case they propose to make any appointments on ad-hoc basis, the respondents have


persons; the dispensing with the services should be on last-come-first-go basis, i.e., the juniormost incumbent has to go out first. As and when vacancies would arise, such persons whose services have been dispensed with will be taken back.

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withdrawn by a letter dated 09.04.1997 (Annexure R-6) their requisition made earlier on 02.04.1997. It is submitted that the applicants are entitled to continue and their services cannot be replaced by another batch of casual labourers. As they have worked for 206 days, their entitlement to the grant of temporary status in terms of the Scheme formulated by the Deptt. of Personnel & Training known as Casual Labourers Scheme of Govt. of India 1993 must be conceded. Learned counsel for the applicant cited the decisions of JT 1996(8) SC 1 - Central Welfare Board & Ors. Vs. Anjali Bepari & Ors. as well as the decision of SLJ 1996(2) - Union of India Vs. Dharampal in support of the stand taken by him that the respondents needed to engage Class IV employees evident from the note recorded by Shri Dhankar, Sr.Accounts Officer seeking approval for such engagement. The ruling in Bepari's case is as under:

"3. Calling this order in question, this SLP has been filed. It is not in dispute that the project is being wound up in a phased manner and the services of the employees are being dispensed accordingly. It is stated by the learned counsel for the petitioners that no junior to the respondent was allowed to continue in the said project. It is stated that there are other projects being operated similarly, but the persons engaged therein also are continuing on temporary basis and are senior to the respondent. Therefore, she cannot be regularised in any other scheme. In view of the above stand, we directed the petitioners to continue the respondent in any other temporary scheme but keeping in mind the overall seniority of all the persons; the dispensing with the services should be on last-come-first-go basis, i.e., the juniormost incumbent has to go out first. As and when vacancies would arise, such persons whose services have been dispensed with will be taken back without following the practice of requisitioning the names of candidates

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from the employment exchange. They would be regularised only when regular posts are available and in accordance with the order of seniority."

The vacancies have been quantified to be 7 in number. The applicants have been detailed to perform Group 'D' jobs. The respondents were impressed by their services and granted them honorarium for the second phase of budget during June-July, 1996. Orders were shown which granted this honorarium to Applicants 1 and 2. The applicants' counsel cited the order of the Tribunal in OA-1696/95 which set aside the order of termination and directed reinstatement and clarified that the Scheme is to be applied to persons who fulfil the specific eligibility criteria of length of service at any time even after 01.09.1993. In OA-2137/95 dated 21.03.1996 - Shri Veer Pal Singh & Ors. Vs. Union of India, it was held that completion of 206 days of service in a period of 12 months and not in a calendar year is sufficient for the grant of temporary status. Shri Gupta, learned counsel for the applicant finally submitted that having been engaged due to shortage of Group 'D' employees their services had been utilised as Peons and recognised as such by granting them honorarium.

2. Learned counsel for the respondents submitted that the Casual Labourers Scheme 1993 came into force w.e.f. 01.09.1993 and the said Scheme is applicable to casual labourers working on the date of issue of the Scheme. As the applicants did not fulfil this condition, they are not entitled to the benefits. It

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is next urged that the applicants have ~~not~~ completed one year even if they had completed 206 days. Clause 4 of the Scheme deals with the temporary status and reads as under:

"Temporary status. - (i) Temporary status would be conferred on all casual labourers who are in employment on the date of the issue of this OM 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)."

As, all the three applicants were engaged in May 1996 and retrenched in March 1997 they did not complete one year and, therefore, the Scheme is not applicable to confer on them temporary status.

3. The counter affidavit further states that the work entrusted to the applicants was purely "casual or seasonal or 'intermittent in nature". Since the 1993 Scheme is not applicable, the minimum qualifying service is 206 days without taking into account paid holidays for each of two consequent years of service rendered. It is denied that the applicants' services were dispensed with with a view to replace them with a fresh batch of casual labourers.

4. In OA-2590/93 relating to the termination of casual labourers it was stated that in violation of the terms of notification issued under the Contract Labour (Regulation and Abolition) Act 1970, the respondents have resorted to the practice of engaging casual labourers through contractors. Section 10 of the Act deals with prohibition of employment of

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contract labour. Sub-section (1) provides that the appropriate Government may, after consultation with the Central Board, prohibit, by notification in the Official Gazette, employment of contract labour. In that OA, this court came to the conclusion that the respondents have been engaging labourers through contractors for cleanliness thereby bye-passing the claims of those engaged by them earlier. The Tribunal held that the respondents' conduct in engaging labourers through contractors for the purpose of performing the job of cleanliness without considering the applicants cases as and when vacancies arose was illegal and uncalled for. Shri Gangwani, counsel for respondents states that there should be a notification prohibiting the engagement of contract labour and there is no such notification applicable to the Ministry of Health. He admitted however that there was a contract entered into some years before by the Ministry of Health and Family Welfare and the respondents might have secured the services of some labourers through this contract. As there is no notification under Section 10, the law laid down by the Apex Court in the Air India Statutory Corporation case - JT 1996(11) P.109 does not apply and therefore there is no need to discuss this aspect further.

5. I have carefully considered the submissions and the following findings and directions are recorded:



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(i) The services rendered by the casual labourers during holidays also should be counted because there is no express prohibition in the Scheme for not counting the work rendered during holidays.

(ii) Even according to the respondents all the three applicants have rendered more than 206 days of service.

(iii) It is not necessary that the applicants should be in service as on the date of the promulgation of the Scheme, namely, 01.09.1993.

(iv) It is not necessary that they should be in employment for one full year. Rendering continuous service of at least one year has been explained to mean rendering 206 days of service in an office observing 5 days week.

(v) There was need of further services because the respondents immediately requisitioned from the Employment Exchange to replace the applicants and finding that a direction was given not to substitute their places by juniors and outsiders, they have hastily withdrawn the said requisition. Other records of the respondents prove that there was need for work and the case was also made out for more Group 'D' posts. Therefore, the termination on 31.03.1997 was only to preempt the applicants from claiming temporary status.

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6. In view of the above, I direct the respondents to consider their claim for temporary status and pass and communicate an order conferring temporary status on the applicants within a period of four weeks from the date of receipt of a copy of this order. It will be evident from the Scheme that despite conferment of temporary status the services of a casual labourer may be dispensed with by giving a notice of one month in writing. In this case the respondents did not give the required notice.

7. It has not come on record clearly that after the termination on 31.03.1997, the respondents have engaged any casual labourer or any labourer through the contractor. If the respondents did engage any casual labourer after the termination ignoring the claims of the applicants, such an engagement would not be ~~not~~ in accordance with law. If after 31.03.1997 respondents have not engaged any casual labour either directly or through the contractor or through the parent department for any of the works of either a casual or seasonal or intermittent nature or the work pertaining to a Group 'D', then the applicants should be satisfied with merely the order of temporary status and wait for their turn to be considered if and when the need arises for the appointment of a casual labourer. If on the contrary, the respondents have utilised the services of contract labourers or labourers from the parent department or from the market for jobs which the applicants have been doing, all such casual labourers must yield their places to the applicants and the applicants shall stand engaged



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within a period of four weeks from the date of receipt of a copy of this order. For the periods the applicants did not work after the termination they shall not get wages on the principle of no work no pay.

OA is disposed of as above. No costs.

Sahu
(N. Sahu)
Member (A)

/Kant/