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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.865/94

New Delhi, the 28th April, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Bindeshwar Singh,
s/o Shri Sundar Singh,
working as Mali
under Station Engineer,
Doordarshan T.V. Tower
Pritampura,
New Delhi.

R/o 347, Tirthak Jain Nagar,
Village Karala, Delhi-81.

... Applicant

By Advocate: Shri K.N.R. Pillai

Vs.

Union of India
through the
Director General Doordarshan,
Mandi House,
New Delhi.

... Respondent

By Advocate: Shri M.L. Verma

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant has alleged that he has been working as a casual worker as Mali in the office under Doordarshan Kendra, Delhi. It is also averred that DOP&T O.M. dated 10th September, 1993 lays down the guidelines as to how the casual workers be considered for granting temporary status and ultimately appointment to Group 'D' post on completing requisite number of working

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days in a calendar year. It is also stated that the applicant is paid @ Rs.1200/- p.m. and sometimes the payment is given to the applicant against a receipt and sometimes no signatures for this payment are obtained. He has, therefore, filed this application for the grant of the reliefs that the respondents be directed to continue the applicant as a casual Mali in preference to those with less service and from 1.9.63 he should be granted the benefits of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Personnel and Training. By the order dated 24th November, 1994 a direction was issued by the Tribunal to the respondents to maintain status-quo and that he will not be compelled to sign any register^{so} as to give an impression that he is under the employment of a contractor.

On notice, the respondents contested this application and stated that the applicant was given engagement on contract basis and that he has never been appointed as a casual worker (Mali). The said contract was awarded to the applicant by the Station Engineer of Baba Saheb

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Dr. Bhim Rao Ambedkar T.V. Tower, Pitampura, which is an attached T.V. Tower with the Door-darshan Kendra, New Delhi. Since the applicant is a contractor himself so he cannot claim to be a casual worker under the respondent office. The applicant has also not been working continuously and as and when there is a work requirement, the services of the applicant are taken on contract basis and the passes required for his entry in the premises are also issued. The payment of Rs. 1200/- p.m. the contract money itself indicates that the applicant is not paid the wages as are being paid to the casual workers or daily rated Mazdoor. The applicant is not only such a contract worker but there are number of them who are engaged and paid from the contingency. There is a sanctioned post of Mali but that has been filled up from the casual workers with temporary status in terms of O.M. of DOP&T dated 10th September, 1993. The applicant has therefore no case and the application deserves dismissal.

The applicant has also filed the rejoinder reiterating the facts already stated in the counter annexing certain evidences of

entry passes to the applicant. Alongwith rejoinder Annexure 'X' has been enclosed to show the sanctioned post of Mali at Delhi.

We heard the learned counsel for the parties and perused the records. The counsel for the applicant has stressed on the O.M. of DOP&T dated 10th September, 1993 which lays down the directions for regularising the Casual Labourers or granting temporary status to them for which a scheme in 1993 Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 which came into force w.e.f. 1.9.1993. The scheme lays down that the temporary status would be conferred on all casual labourers who were in 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.. However, these casual labourers granted temporary status would not be brought on the permanent strength of the cadre,

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The respondents in their reply contended that the applicant has been working with the respondents on a contract basis and that he is not duly employed as a casual worker. He, as and when required, was awarded a contract for the job of gardner by the Station Engineer of T.V. Tower, Pitampura and has been paid the contractual amount in full. The applicant also in the O.A. stated that there is sanctioned fund at the rate of Rs.3000/- p.m. for the maintenance of garden and lawns at the Pritampura T.V. Tower and the wages as casual Mali have been paid from this fund. It goes to show that the applicant is being paid from the contingency allotted by the authorities on the requisition made by the Station Engineer, Pritampura T.V. Tower. There is, therefore, no post against which the applicant has been working merely because there is a record of entry of the applicant within the premises of T.V. Tower, Pritampura, will not by itself a proof that the applicant has been employed as a casual worker. No attendance register of the applicant is being maintained. Looking to the payment made to the applicant a consolidated sum is paid as labour charges for certain period and Annexure II collectively

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pertains to a number of documents where the applicant has been paid the amount which is varying in quantum, sometimes it is Rs.500/- other times it is Rs.600/- and Rs.650/-, at other occasions it is Rs.1300/- even for less than a month. The applicant has been receiving these amounts right from 1990. The stand of the respondents is that there are number of persons who have been assigned work on contract basis and payment is made out of contingency fund. It is better to refer to Form 'D' annexed by the respondents at page 40 of the counter where a sum of Rs.1300/- has been paid to the applicant for the months of July and August on 3rd September, 1994 with a certificate that the payment has been made after surveying the market on lowest rate. It is also certified that the entry has been made in the petty works register. This document in itself establishes that the work was assigned to the applicant as a gardner on a contract basis and a consolidated sum has been paid. Therefore, it is clear that the applicant has not been in the casual employment of the Station-incharge T.V. Tower, Pritampura.

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For a casual employment the wages are to be paid on daily basis or monthly basis commensurate with the emoluments being paid to the Group 'D' employees. This has also been laid down by the catena of judgements decided by the Tribunal as well as by the Hon'ble Supreme Court. The Hon'ble Supreme Court also in the case of daily rated casual labour P&T Department Vs. Union of India reported in 1988 SCC (L&S) 138 observed that on the basis of principles of equal pay for equal work the casual labourers have also to be paid according to wages paid to those who are regularly employed and performing the same duties as is being done by the casual workers. The case of the respondents is that the applicant was assigned with certain work and because there was no need to engage on full time basis, the applicant was working as a part-time worker. Seeing to the nature of the payments made to the applicant and that the applicant has accepted those payments and continuous to work on the same conditions of allotment of work on a fixed amount, the applicant is now estopped to claim an appointment as a casual worker. There is a difference between the casual worker and a contract employee.

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There is no relationship of master and servant between persons who are giving job, duties on contract basis. While the relationship exists in the case of those who are employed on casual basis. There is no appointment letter in favour of the applicant nor the conditions of engagement has been referred to in the original application. Merely because the applicant is working on obtaining entry passes in the premises of Pritampura T.V. Tower as a Mali, would not establish that the applicant was at any time on the muster roll of the respondents and was a casual worker. The circular of GOP&T dated 13.9.1993 is not applicable at all to the case of the applicant. The applicant, therefore, cannot be considered for grant of temporary status.

The burden lay heavily on the applicant to show that he was initially engaged as a casual worker. Merely being a worker could not prove the applicant in the casual employment of Respondent No.3. The applicant has to establish this fact as a part of his service conditions. The documents annexed with the O.A. do not at all establish this fact. The applicant, therefore, is held to be engaged not as a casual

worker but on a token amount for performing the assigned duties of gardner as and when the occasion for doing the particular work in the said compound of garden is required to be done.

The learned counsel for the applicant has also referred to the provisions of Contract Labour (Regulation & Abolition) Act, 1970 and referred to the definition of Contract Labour as well as Contractor. A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Here the case is that the applicant himself has undertaken the work of gardner on a particular occasion on fixed amount. Thus, the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 are not applicable to the present case.

There is a scheme of regularisation of casual worker but there is no such scheme of regularisation of an ^{alleged} employee who has been assigned the work on contract basis. By accepting the contract, he cannot subsequently

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state that he is doing the work because he is not a casual worker and an affidavit in this regard has been filed on behalf of the respondents by one Shri Ram Bilas and para 2 of the affidavit is relevant. This affidavit cannot be said to be untrue on facts. Thus the position of the applicant as a person who has been assigned the work on contract basis is established.

The applicant, therefore, is not entitled to the grant of the relief prayed for. The application is dismissed accordingly. Cost on parties.

(B.K. SINGH)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)

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