

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

(17)

O.A. No. 902 OF 2000

O.A. No. 903 of 2000

New Delhi this the 9th day of August, 2001.

Hon'ble Sh. Shankar Raju, Member (J)

OA No. 902 of 2000

1. Shri Dharam pal s/o Shri Jai Narain,
r/o T-510/C-58, Patel Nagar,
New Delhi.
2. Shri Babu Ram s/o Shri Hari Ram,
r/o Village Bhagille,
palwalt (Haryana).
3. Shri Bhim Singh s/o Shri Prabhati Lal,
r/o WZ-1 Palam,
Delhi.
4. Shri Tribhubhan Singh s/o Shri Kamleshwar,
r/o P-123, Old Pilanji Gaon,
Sarojini Nagar,
New Delhi-110023.
5. Shri Amar Nath s/o Shri Imrat,
r/o B-1/234, Sultan Puri,
Delhi.

..... Applicants

Versus

UNION OF INDIA, through

1. The Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110011.
2. The Director General of Works,
Central Public Works Department,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110011.
3. The Chief Engineer (DD-2),
Sewa Bhawan (2nd Floor),
R.K. Puram,
New Delhi-110066.
4. The Superintending Engineer,
Central Public Works Department,
N.S.G. Project,
Manesar,
Distt. Gurgaon (Haryana).

..... Respondents

O.A. No. 903 of 2000

1. Mahesh Kumar,
s/o Shri Bharat Singh,
r/o P-34, Old Palanji Goan,
Sarojini Nagar,
New Delhi -110023.
2. Shri Rajender Kumar,
s/o Shri Bharat Singh,
r/o A-8/609, Amar Colony,
Harijan Basti,
Poorvi Gokulpuri,
Delhi - 110094.
3. Shri Chaman Lal,
s/o Shri Lekhi Ram,
r/o Village Narangpur,
Distt. Gurgaon (Haryana).

*Applicants.***Versus****UNION OF INDIA, through**

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Central Public Works Department,
N.S.G. Project,
Manesar,
Distt. Gurgaon (Haryana).

Respondents

Presence: Sh. O.P. Khokha and Sh. S.C. Luthra
Advocates for Applicants.

Sh. Rajeev Bansal,
Central Govt. Standing Counsel for Respondents.

ORDER

As common question of law is involved in these OAs,
hence both are disposed of by this common order.
Applications in these OAs for joining together have been
filed which have been allowed.

2. The applicants five in number in OA 902/2000 have been working as Beldars/Sewermen/Drivers/Plumbers for more than 10 years on work order with the respondents, whereas in OA No. 903/2000, the applicants, three in number, have been working as Beldar for about last 10 years.

3. Briefly stated the applicants had come before this Tribunal in OA 2170/99 & OA 2171/99 and vide order dated 12.5.2000, as there being no petition for transfer for retaining the OAs in Principal Bench the OAs were dismissed. The request of the Counsel for applicants for withdrawal of the OAs with permission to refile was also rejected by the Single Bench. Consequently on filing the present OA, PT has also been filed for granting them permission to file the OA in the Principal Bench, which was allowed.

4. According to the applicants they have been engaged to work on casual basis from month to month, and have been accorded the wages on monthly basis as per the actual working days at the rates stated for normal duty hours on the basis of 1/30 th of the monthly rates and have been engaged as Casual Workers. The applicants contend that they are stated to be the contractors as well as executors. The work contract is for providing the services to be sought and for maintenance of civil work. It is stated that the contract is only a sham and camouflage by treating them as contractors to avoid the ban and engagement of daily rated wagers on regular jobs. It is stated that applicant had worked for more than 240 days in each year and their case have been recommended by Chief Engineer of the respondents for according them temporary status vide letter dated 15.1.96. It is also

stated that the project is upto 31 July, 2001 but the respondents for the purpose of work have described it as single unit and there is availability of work as projects are of continuous nature and work is also of perennial nature. Applicants have placed reliance on Apex Court's decision in daily rated labourers of P&T Department Vs. Union of India (AIR 1988 (1) SCC 122) and stated that no distinction should be made between the Casual Workers on Mustor Roll and those not paid on Mustor Roll. The applicants by further relying on contract work (Regularisation and Abolition) Act 1970 and contend that the same prohibits engagement of workers on contract basis. The applicants have further stated that in the identically situated case OA 256/98 vide order dated 28.07.1998 in the matter of Bijay Narain Misra Vs. Union of India wherein respondents were CPWD and in the similar circumstances, the applicants therein had been engaged as on contract basis, it was held that irrespective of different nomenclature, status of applicants was of Casual Worker on daily rate basis and they are entitled for re-engagement for grant of temporary status as per the DOP&T Scheme applicable to CPWD. Further placing reliance upon the decision of this Court in Vijender Singh Vs. Union of India in OA No. 78/98 decided by an Order dated 23.07.1999 pertaining to the Drivers with CPWD in which reliance has been placed on the decision of Apex Court in Lalji Ram Vs. Union of India & Another. SLP (C) No. 17385 of 1994 decided on 28.02.1995, has held that there was no third party contractor. The applicants are contractors/executors which is camouflage to disentitle them for temporary status. Further placing reliance on Apex Court's decision in Bhgawati Prasad Vs. Delhi State Mineral Development Corporation (1990) 1 SCC 361, wherein it is held that if daily workers were appointed on

considerable length of time, it is not legal to deny them regularization/confirmation on the ground of lack of prescribed educational qualifications. The learned counsel for applicant has further placed reliance on decision of Apex Court in Union of India Vs. Subir Mukherji & Ors. JT 1998

(3) SC 540 to contend that in case the work is of perennial nature, the fact of their working with the respondents continuously and uninterruptedly entitles them for consideration as regular Group D employee, if found fit. In this background it is found that the contract is sham/camouflage. Whereas applicants have worked as Casual Worker and work is of perennial nature and as such entitle to be considered for according them temporary status and cannot be treated as Casual Labour as it is more than 10 years and now they are officially eligible for the granting of temporary status and regularisation to Group D post in accordance to DOP&T scheme dated 10.09.1993.

5. Learned counsel for the respondents strongly rebutting the contentions stated that the applicants had been working on the project which is temporary in nature and there is no relation of master and servant between the applicants and the respondents. The respondents have raised preliminary objections that on account of previous OA 2171/99 having been dismissed, without permitting the applicants to file PT for transferring of OA in Principal Bench, the present OA is barred for res-judicata. It is also stated that the unit is a temporary one and there is no sanctioned posts of Beldars/Sewermen/Drivers/Plumbers with the respondents. According to them applicants had been given contract for specific period in Maneshwar, Gurgaon, which was for the short duration, as such Government should not be burdened to

(2)

keep them engaged in the work. The respondents have further stated that applicants have not exhausted alternative remedies. It is stated that the applicants had been paid on monthly basis rather than on the basis of work order and as per terms and conditions. As the applicants have not worked as Casual Worker, they are not covered under the cover of DOP&T scheme. It is also denied that the work is of perennial in nature. The learned counsel for respondents has placed reliance on several rulings to contend that it is not legal to issue direction for regularisation keeping in view the Public Exchequer. The applicants in their rejoinder contend that prayer for transfer of OA has already been allowed.

6. I have carefully considered the rival contentions of the parties and perused the relevant record. The contention of respondents that the applicants are contractors and deputed for specific job on a project which was for a fixed term and rather be not treated as Casual Worker and be not entitled for the benefit of the scheme, is not maintainable. The contention of respondents that they have appointed applicants for a specific period of time as such they are not Casual Worker, is not legally tenable as it is fully established in OA No. 256/98 (Supra) the court while dealing with the same Department in the case of Drivers had issued directions on work order and placing reliance on the ratio of the Apex Court in Union of India Vs. Subir Mukherji (Supra) has come to the conclusion that the applicants therein were having fixed work contract having worked for 4 to 5 years and have been engaged individually for a specific job. It is also highlighted that payment are made on daily work basis as such in view of the circumstances therein it has been found

that whatever was nomenclature, all the applicants were Casual Workers on daily wage rated. In the present case the applicants are identically situated. They have been working both as contractor/executor on individual basis and had rendered their services for the last 10 years. By a letter dated 18.01.96 which enunciates the procedure, contains a decision to grant temporary status to those workers who are engaged on work order. As such the respondents themselves have treated applicants as casual workers. The contention of respondents that the project is to end on specific, i.e., 31.07.2001 and there may not be availability of work and therefore, there is no question of engagement of applicants further, we find that CPWD, the respondents have number of projects on their different offices, sub-offices and branches. The projects are of continuous nature. It is not the case that after the completion of Manesar project, no project is to be carried out by the respondents. The projects are started from time to time. Facts remains that the applicants have been working as Beldars/Sewermans/Drivers/Plumbers and other categories, had a common nature of work and doing work of perennial nature and payment is made to them by the respondents as contractors as well as executors. It is also admitted that the work is supervised by one Executive Engineer. As such we find that there is a relationship of master and servant between applicants and respondents. The contract is only a sham and camouflage, to deny them the benefit of regularisation. In view of the decision of Apex Court in Secretary, Haryana State Electricity Board Vs. Suresh and Ors. (Supra) wherein also contract was found to be sham. The ratio of the judgment of Lalji Ram Vs. Union of India & Another (Supra) which deals with the case of Driver, in our considered view

is applicable to applicants mutatis mutandis in principle. Irrespective of the nomenclature of the applicants they have the status of Casual Worker on daily rate basis and as such they are entitled for as their legal right to be considered for accord of temporary status and regularisation in accordance with DOP&T scheme and subject to their confirming to eligibility criteria.

7. I dispose of both these OAs with directions to the repondents to consider the case of the applicants for grant of temporary status and regularisation in accordance with scheme applicable to Casual Workers in CPWD. While considering the applicants for Group D post, earlier experience of the applicant shall be weighed along with relaxation of age as admissible under the Rules. The above stated directions shall be complied with by the respondents with in three months from the receipt of the copy of this order. No cost.

8. Copy of the order be placed in OA No. 903/2000.

S. Raju
(SHANKER RAJU)
MEMBER(J)

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