

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2013/89
T.A. No.

199

DATE OF DECISION 5-6-90

Shri Prem Singh & Others

~~Petitioner~~ Applicants

Shri S.C. Luthra

Advocate for the Petitioner(s)

Versus

Delhi Administration & Anr. Respondent

Shri M.M. Sudan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

There are 54 applicants in this application filed jointly by them under Section 19 of the Administrative Tribunals Act, 1985. They are working in the Lok Nayak Jai Prakash Narain Hospital on daily wages in various capacities, such as Chowkidar, Nursing Orderly, Safai Karamchari, etc. Their grievance is that they have been verbally told on 16.9.1989 not to report for duty any longer. They have sought to quash the verbal order of the respondents and have prayed for a direction to be issued to the respondents to regularise their services.

11

2. As regards the details of the period of work put in by the applicants before us, there are divergent versions. The applicants contend that they have put in more than 240 days of continuous service and as such, they are entitled to the protection of Section 25F of the Industrial Disputes Act, 1947. In support of their contention, the applicants have produced, along with their rejoinder affidavit, a computerised seniority list of daily-wagers at Annexure A-8, pages 57 to 61 of the paper-book. They have also produced the numerous orders of appointment issued to the applicants for a period of 89 days at a time.

3. As against the above, the respondents have contended that all the applicants have not rendered 240 days of continuous service. They have annexed to their counter-affidavit Annexure R-1, according to which, only some of the applicants have rendered 240 days of service. The respondents have not, however, disputed the fact that the provisions of the Industrial Disputes Act apply to them. There can be no doubt in this regard after the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. Rajappa, 1978 (2) S.C.C. 213.

4. We have gone through the pleadings and have heard the learned counsel for both the parties. We have also duly considered the written submissions made by the applicants and the numerous rulings relied upon by them.

5. In a proceeding before us, which is akin to that of a writ petition filed in a High Court, we cannot normally go into the disputed questions of fact. The pleadings before us in the instant case are also insufficient to come to a definite conclusion as to which applicant has

On

9
12

put in a definite number of days of service so as to give a positive direction to the respondents concerning him.

6. The respondents have stated that in their Hospital, there are 1445 sanctioned posts of Class 'D' employees consisting of Nursing Orderlies, Sweepers, Peons, Bearers, Mates, Structure Bearers, Lineman Attendants, Mashalchi Bearers/Khidmatgars and Chowkidars. The applicants came to be appointed on daily-wage basis as many of these posts had fallen vacant due to retirement, etc. The regular appointment is to be made by the process of recruitment through Employment Exchange. They have further stated that a proposal for regularisation of daily-wagers is pending consideration of the Delhi Administration.

7. The applicants are aggrieved that even though they are eligible for regularisation and absorption in the various Group 'D' posts, the respondents are resorting to fresh recruitment, overlooking their claims.

8. In our opinion, the practice followed by the respondents to engage the applicants on daily-wage basis for short periods, to dispense with their services to replace them by fresh recruits, and to give artificial breaks with a view to preventing the applicants from seeking protection under the Industrial Disputes Act, 1957, is not legally sustainable. Though not the holders of civil posts, the applicants are entitled to the protection of Articles 14 and 16 of the Constitution, apart from the protection afforded by the Industrial Disputes Act. Names of the applicants had been sponsored by the Employment

or

.....4....

13

Exchange at the time of their initial engagement and it will not be legally in order to replace their services by fresh recruits sponsored by the Employment Exchange. This is particularly so when the respondents have not alleged that the service rendered by the applicants before us was not up to the mark.

9. In the conspectus of the facts and circumstances of the case, we order and direct as follows:-

(i) The respondents shall prepare a scheme within a period of three months from the date of communication of this order for regularisation and absorption of the daily-wage employees engaged by them in Group 'D' posts. The scheme should be evolved on the basis of the total length of service put in by each of the daily-wage worker, including the applicants. The scheme should also cover the daily-wage employees whose services have been terminated. No fresh recruitment through the Employment Exchange or otherwise shall be made before considering the suitability of the applicants and other daily-wage employees, whose services have been terminated, for regularisation and absorption in accordance with the scheme to be prepared by them. The regularisation and absorption should be on the basis of the total length of service put in by the daily-wage employees in the Hospital, ^{artificial} ignoring the broken periods when their services were discontinued.

(ii) If it is found that the services of any of the applicants who have put in 240 days of continuous service, have been terminated for any reason

~~10~~
14

whatsoever, they shall be reinstated forthwith.

We do not, however, pass an order regarding
payment of back wages to them.

There will be no order as to costs.

D.K. Chakravorty
(D.K. Chakravorty)
Administrative Member

5/6/90

amr
5/6/90
(P.K. Kartha)
Vice-Chairman(Judl.)