

Date	Office Report	Orders
12.8.77		<p style="text-align: center;">Smt S. K. Bhupatavalli & Mr. A. K. Bhadwaj Present: Counsel & in respondent Arguments concluded. Judgment Reserved.</p> <p style="text-align: right;">Amr. (B. N. Bhattacharya) Amr.</p> <p style="text-align: right;">(A. K. Korde) V.C.J.</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.320/89

Date of Decision: 15.11.91

Shri Radhey Shyam & Another

Applicant

Shri S.K. Gupta

Counsel for the Applicants

Vs.

Union of India through
Secretary, Ministry of
Water Resources & Ors.

Respondents

Shri P.H. Ramchandani

Counsel for the Respondents

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

The Hon'ble Mr. B.N. Dhoundiyal, Member(A).

1. Whether Reporter of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT
(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

This application has been filed by Shri Radhey Shyam and Shri Ganga Saran, who were employed as casual labourers in the office of the Controller of Accounts, Ministry of Water Resources for a continuous period of over two and a half years, against termination of their services.

2. Applicant No.1 was initially appointed as a Waterman-cum-Peon on 15.4.86 and applicant No.2 in similar capacity on 16.4.86. Applicant No.1 was not allowed to work from *27.9.88* and applicant No.2 from 24.1.89. Their services were terminated without giving them any notice. The applicants
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have stated that the respondents had placed a requisition for fresh recruits with the Employment Exchange and had also regularised the services of five other casual workers, though they were not sponsored by the Employment Exchange.

3. The applicants were engaged as daily wagers and performed duties like shifting of records, watermen and the duties of peon. The applicants have contended that in terminating their services, the respondents have violated the instructions contained in OM.No.49014/19/84 Estt.(C), dated 26.10.1984 issued by Ministry of Home Affairs (Department of Personnel), that those casual workers who have put in 206 days continuous service for each of two consecutive years be regularised in Group 'D' posts.

4. The respondents have stated in their counter affidavit that none of the applicants was sponsored by the Employment Exchange at the time of their engagement. They were engaged as Watermen for a short spell of three months, which could be terminated at any time, without assigning any reason, as already intimated to them. The respondents did consider their regularisation but were advised by the Directorate of Employment that it was obligatory in the Government departments to employ only those candidates who were sponsored by the Employment Exchange. Hence they had no alternative but to terminate the services of the applicants. The five cases of regularisation referred to by the applicants were of employees who were engaged before 7.5.85 and were eligible for regularisation even though they were not sponsored by the Employment Exchange in terms of Department of Personnel OM.No.49014/18/84(Estt)(C), dated 7.5.85.

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5. The case of casual labourers who have worked for 240 days (206 days in case Establishments having five days a week) for two consecutive years but have been recruited without the sponsorship of the Employment Exchange had been considered by various courts in a number of cases. It was held by the Punjab and Haryana High Court in Madan Mohan Goel Vs. State of Haryana (1975 SLJ. pg.170) and the Supreme Court in Union of India Vs. Hargopal (1987(3) SCC 308), that it is not incumbent upon the employer to employ only persons recommended by the Employment Exchange. The employer can make appointments direct and such appointments cannot be held invalid. The courts have, therefore, held that regularisation cannot be denied to the casual labourers simply on the ground that their names were not sponsored by the Employment Exchange, if they are otherwise qualified. (Mohinder Singh & Ors. Vs. State of Haryana & Ors. - 1988(3) SLR 245).

6. Another Bench of this Tribunal, of which one of us, Shri P.K. Kartha was a party, considered this question in Durga Prasad Tewari & Ors. Vs. U.O.I. & Ors. (ATR 1990(1) CAT 233) and opined that Casual Labourers who have worked for two to four years, as in the instant case, should be considered for regularisation of their service, irrespective of whether, their names have been sponsored by the Employment Exchange (also Union of India & Others Vs. Hargopal & Others (1987(3) SCC 308; Swaminath Sharma & Ors. Vs. U.O.I (ATR 1988(1) CAT 84 and T.S. Sadashivaiah & Ors. Vs. Secretary to Govt. of India & Others (ATR 1989 (1) CAT 172). In case of Unnikrishnan & Ors. Vs. Superintendent of Post Offices & Ors. (1990 (13) ATC 250), the Ernakulam Bench of this Tribunal considered the validity of exemption from sponsorship from Employment

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Exchanges being restricted to those recruited before 7.5.85 under the instructions issued by the Department of Personnel vide OM.No.49014/18/84 Estt.(C), dated 7.5.85, and held that such a cut-off date was arbitrary and not sustainable.

7. Following the ratio of the above judgements, we hold that the termination of the services of the applicants and denial of regularisation in Group 'D' post to them on the ground that they were not recruited through the Employment Exchange was illegal. We, therefore, allow the application and direct the respondents to reinstate the applicants as casual labourers within a period of one month from the date of communication of this order. They shall also consider the question of regularisation of the services of the applicants in Group 'D' posts from the date their immediate juniors were regularised. ^{AN} Instructions in this regard should be issued within one month of receipt of this order.

8. Under the circumstances, we do not order payment of any back wages to the applicants. There will be no order as to costs.

B. N. DHOUDIYAL
(B.N. DHOUDIYAL) 15/11/91
MEMBER(A)

Carry
15/11/91
(P.K. KARTHA)
VICE CHAIRMAN(J)