(16)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No.OA-37/88 Date: 10.8.1989

Shri Pramod Kumar & Ors. .... Applicants

Versus

Union of India & Ors. .... Respondents

For the Applicants .... Shri K.L. Bhatia, Advocate

For the Respondents .... Shri M.L. Verma, Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri M.M. Mathur, 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

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

The grievance of the applicants, who have worked in the Delhi Milk Scheme as Daily Paid Mates for periods ranging from March, 1987 to October, 1987 in this application filed under Section 19 of the Administrative Tribunals Act, 1985 is that they have not been allowed to work by verbal orders issued by the respondents. They have prayed that they should be allowed to work and be regularised in the Delhi Milk Scheme (DMS), that they should be paid the same salary and allowances and given the same conditions of service as in the case of regular Class IV Mates.

2. On 4.5.1988, the Tribunal passed an order directing that the applicants should be provisionally taken back as Daily Paid Mates if any Daily Paid Mate junior to them is still being engaged.

3. It may be mentioned at the outset that the D.M.S. Employees Union had filed OA-1059/87 in this Tribunal in

.....2..,

a representative capacity praying that the Daily Paid Mates (Badli Workers) appointed as such in the D.M.S. from different dates between 14.5.1981 onwards, should be treated as regular employees in all matters relating to salary, allowances, medical facilities, TA,DA, etc. from the date of their initial appointment with payment of arrears of interest. They had also prayed that the Badli Workers should be brought over to regular establishment. By the judgement dated 21.10.1987, the Tribunal allowed the application and passed the following directions:-

(a) The respondents should accord to the daily rated Mates (Badli workers) who are concededly performing the same duties as regular class IV Mates, the same salary and conditions of service other than regular appointment, as are being received by the regular Class IV Mates from the dates of their appointment as Badli worker.

(b) Those daily rated Mates who actually worked for not less than 240 days in any period of 12 months should be transferred to the regular establishment with effect from the first day of the month immediately following the 12th month of the said period. The gap, if any, in their employment subsequent to the date of such regularisation should be treated as leave with or without pay as due or 'dies non', as the case may be. Supernumerary posts in the regular establishment may be created if necessary for this purpose.

....3..,

(c) The respondents should issue necessary orders and make good the payments of arrears of salary, etc., within a period of four months from the date of communication of this order."

4. Special Leave Petition filed by the respondents in the Supreme Court against the aforesaid judgement was dismissed by that court. The applicants claim that they belong to the same category but their services have not been regularised and by not allowing them to enter the premises of the D.M.S., they have been prevented from doing their work.

5. The facts of the case in brief are that the applicants in the present case were also similarly employed as Daily Paid Mates since March, 1987. They had been recruited through the Employment Exchange by the respondents. They were being paid wages at the rate of Rs.13.60 per day for the days of work with no leave or holiday of any kind, except the three national holidays. They were also not given uniform, liveries or other amenities as are given to regular employees. From October, 1987 onwards, the applicants have not been allowed to work.

6. The contention of the applicants is that in accordance with the Certified Standing Orders for the employees of the D.M.S. (Annexure II), they would fall under the category of "casual workers" who are to be regularised if they have continuously worked for three months. Even if they are to be treated as "Badli" workers, the Certified Standing Orders provide that those Badli workers who have actually worked for not less than 240 days in any period of 12 months, shall be transferred to the regular establishment. They claim that they have been continuously working in their jobs for about 240 days but have not been transferred to the regular establishment.

6. The case of the respondents is that the applicants were not casual workers but were Badli Workers who were engaged for a short duration. According to them, the

.....4..,

applicants neither worked continuously in their jobs nor did they complete 240 days' attendance. They have further contended that the applicants are not entitled to leave of any kind except national holidays, or any other amenities provided to the regular employees.

7. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The issue before us had been keenly contested by both sides. The respondents have raised several preliminary objections to the maintainability of the application such as that they do not hold civil posts and that though the D.M.S. is an industry within the meaning of the Industrial Disputes Act, the applicants have rushed to this Tribunal without exhausting the remedies available to them under the said Act.

8. With regard to the preliminary objection that the applicants are not holders of civil posts, the matter is already concluded by the judgement delivered by the Full Bench of this Tribunal in TA-161/86 and connected cases (Rehmatullah Khan & Others Vs. Union of India & Others) delivered on 24.4.1989. The Full Bench of the Tribunal has held that the Tribunal has the jurisdiction to entertain the cases of casual labourer/daily rated/daily-wager under Section 19 of the Administrative Tribunals Act.

9. The learned counsel for the respondents has raised a preliminary objection that the application is not maintainable as the applicants have not exhausted the remedies available to them under the Industrial Disputes Act. He relied upon some rulings* in support of his contention.

*Cases relied upon by the learned counsel for the respondents:
1989 (2) SLJ 44; 1988 (7) A.T.C. 1000; 1989(1) A.T.R.365; 1988 (3) SLJ 11; 1989(1) A.T.R. 85; and Judgement of the Tribunal in OA-18/89 dated 2.1.1989.

10. As against this, the learned counsel for the applicant had contended that the Tribunal has jurisdiction to entertain the application and he has also cited before us the rulings** in support of his contention.

11. It is unnecessary to discuss the various rulings relied upon by the learned counsel for both the parties. The question as to the applicability of the provisions of the Industrial Disputes Act and in particular, Section 25F thereof, to proceedings before the Central Administrative Tribunal and the jurisdiction, power and authority of this Tribunal to grant relief if the order of termination of service does not conform to Section 25F of the I.D. Act, has been considered by a Larger Bench of the Tribunal in S.K. Sisodia Vs. Union of India and Others, 1989 (1) SLJ, CAT 449. It was held that the Tribunal has jurisdiction to decide such matters. There is no absolute bar under Section 20 of the Administrative Tribunals Act to entertaining an application if the applicant has not availed of the remedies available to him under the relevant service rules as to the redressal of grievance. Discretion is vested in the Tribunal to entertain an application even if the applicant has not exhausted the remedies available to him. This is clear from the language of Section 20 of the Administrative Tribunals Act which provides that "the Tribunal shall not ordinarily admit an application, etc." In a case of this kind before us where the applicants have not been allowed to work for several months, the discretion of the Tribunal has to be exercised in favour of the applicants and the application should be decided on merits. It will not be just and proper to insist on

---

**Cases relied on by the counsel of the applicants:

SLJ 1989(1) P&H 49; 1970 (2) SCC 355; AIR 1985 SC 147; 1989(1) ATLT 3.

.....6..,

the applicants' exhausting available remedies under the Industrial Disputes Act which are not only time-consuming but also not efficacious.

12. The records of the case do not substantiate the contention of the respondents that the applicants were Badli Workers within the meaning of the Certified Standing Orders of the D.M.S. The applicants have also not been able to produce any document to substantiate their claim that they were casual workers. Their claim however, may, be considered on the basis that they were Badli workers. It has, therefore, to be seen whether they had actually worked for not less than 240 days in any period of 12 months. In case they have so worked, they would be entitled to be transferred to regular establishment under the said standing orders.

13. As to the number of days worked by the applicants, the particulars furnished by both parties do not tally as will be seen from the following table:-

Name of Applicant	No. of days worked as per respondents	No. of days worked as per applicants	Addl.days claimed by applicants towards sick leave and Sundays and days of night duty
1.	2.	3.	4.
1. Pramod Kumar	209	226	plus 15 +80 =321
2. Rohtas	193	228	Plus 8 +50 =286
3. Rajinder Kumar	193	232	Plus 8 +65 =305
4. Hari Nandan	231	238	Plus 3 +85 =326
5. Krishan Dev	209	229	Plus 12 +72 =313
6. Suresh Mehto	207	231	Plus 10 +65 =306

.....7..

1.	2.	3.	4.
7. Ram Bali	169	230	Plus 11 +70 =311
8. Vasudeva	184	231	Plus 10 +68 =309
9. Lakhan Mehto	213	233	Plus 8 +50 =291
10. Shambhu Prasad	208	234	Plus 7 +65 =306
11. Hari Narain	180	190	Plus 50 +60 =300
12. Ravinder Pathak	225½	233	Plus 8 +73 =314
13. Vinod Kumar	209	230	Plus 11 +81 =321
14. Ram Udgar	206	231	Plus 9 +75 =315
15. Rajinder Kumar	217½	226	Plus 15 +60 =301
16. Rajesh Kumar	185	229	Plus 7 +50 =286
17. Mohinder Singh	148	180	Plus 34 +97 =311.

14. The respondents have given the above figures through an affidavit filed by Shri J.R. Agarwal, Personnel Officer of the Delhi Milk Scheme. The applicants have also given the above figures by an affidavit duly signed and sworn by them before an Oath Commissioner.

15. Despite ample opportunity given to the respondents to produce before us any records to show how the applicants could be treated as Badli Workers and in whose place they occupied the post they worked, they have chosen not to do so.

16. In a somewhat similar case of H.D. Singh Vs. Reserve Bank of India, 1985 SCC (L&S) 975, the Supreme Court had

.....8..,

occasion to consider whether for the purpose of computing the period of 240 days in a year, Sundays and other paid holidays could also be included. In that case, the contention of the respondents was that the employee had worked for 4 days in 1974, 154 days from January, 1975 to December, 1975 and 105 days from January, 1976 to July, 1976. The employee was denied work from July, 1976. They did not take into account Sundays and other holidays in computing the number of days that the employee worked. The affidavit filed by the employee established that he worked for 202 days. He contended that if 52 Sundays and 17 holidays were also added, the total number of days on which he worked would come to 271 days. Upholding his contention, the Supreme Court directed that the employee should be enlisted as a regular employee, reinstate him and pay him back wages. The Supreme Court set aside the order of the Industrial Tribunal and held that the striking off of his name from List II amounted to retrenchment under Section 2(00) of the Industrial Disputes Act and was in violation of Section 25F thereof.

17. In the conspectus of facts and circumstances of the case, we are of the opinion that the applicants shall be deemed to have been transferred to the regular establishment from 1st November, 1987. The striking off of their names from the rolls of Workmen of the respondents amounted to retrenchment under Section 2(00) of the Industrial Disputes Act and was in violation of Section 25F thereof. In the circumstances of the case, we do not pass any order regarding payment of back wages. The intervening period should be treated as leave with or without pay as due or

On

.....9..,

dies non, as the case may be. Supernumerary posts in the regular establishment may be created, if necessary. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. There will be no order as to costs.

(M.M. Mathur) 10/8/88
Administrative Member

10/8/88
(P.K. Kartha)
Vice-Chairman(Judl.)