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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos. (1) OA 948/88
(2) OA 1091/88
(3) OA 1031/88 &
(4) OA 1302/88

Date of decision: 02.8.1991.

(1) OA 948/88

Shri Surya Narayan

... Applicant

Vs.

Union of India & Another

... Respondents

(2) OA 1091/88

Shri Jai Veer

... Applicant

Vs.

U.O.I. through the
Secretary, Min. of
Agriculture & Another

... Respondents

(3) OA 1031/88

Shri Hari Das Shinde & Others

... Applicant

Vs.

U.O.I. & Another

... Respondents

(4) OA 1302/88

Shri Surender Singh

... Applicant

Vs.

U.O.I. & Another

... Respondents

For the Applicants in (1) to (4)

... Shri K.L.
Bhatia, Counsel

For the Respondents in (1) to (4)

... Shri M.L. Verma,
Counsel

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CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOLNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

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

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There are ~~64~~ applicants in all in these

applications. They have worked for different periods in the Delhi Milk Scheme (hereinafter referred to as 'DMS') as Mates/Badli Workers/Casual Labourers. As the issues raised in the present applications are identical, it is proposed to deal with them in a common judgment.

2. The applicants have prayed that as they have worked for not less than 3 months in regular work of the respondents, ^{that} *o* they be directed to transfer to the regular establishment of the DMS, that they be directed to implement the judgment of this Tribunal dated 21.10.1987 in OA 1059/87 (DMS Employees Union Vs. Union of India & Others) and that the respondents be directed to treat the days on which they were not allowed to join their work without any notice and valid orders as on duty for all purposes. *o*

3. It may be recalled that the DMS Employees Union had filed in this Tribunal OA 1059/89, which was disposed of by judgment dated 21.10.1987. In the said application, they had prayed that the daily paid mates/badli workers be brought over to regular establishment and that they be paid salary, allowances etc. on par with Group 'D' employees. The said application was disposed of by judgment dated 21.10.1987, the operative part of which reads as follows:-

"(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) These daily rated Mates who have 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 months of the said period. The gap if any in their

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employment subsequent to the date of such regularisation should be treated as leave with or without pay as ^a ~~xxx~~ due or 'dies non' as the case may be. Supernumerary posts in the regular establishment may be created if necessary for this purpose.

(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. There was another round of litigation before the Tribunal on the same issue in OA 37/1988 (Shri Pramod Kumar & Others Vs. Union of India & Others). The applicants who had worked as daily paid Mates for periods ranging from March 1987 to October, 1987 had alleged that they had not been allowed to work by verbal orders issued by the respondents. They had prayed that they should be allowed to work and ^{be} ~~regularised~~ in the DMS and that they should be paid the same salary and allowances as in the case of regular employees. The said application was disposed of by judgment dated 10.8.1989 to which one of us (Shri P.K. Kartha) was a party. The operative part of the judgments reads

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as under:-

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" 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/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 25 F 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 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."

5. The case of the applicants is that they are similarly situated like the applicants in OA 1059/87 and OA 37/88, mentioned above.
6. After the filing of these applications, some other employees similarly situated moved Misc. Petitions with a prayer for impleading them as applicants as mentioned below:-

- (1) In OA 1091/88 MP No.1646/90 was filed seeking impleadment of Mohan Jha as ~~an~~ applicant.
- (2) In OA 1031/88 MP Nos. 2586/90 and 2587/90 were filed for impleadment of Shri Balwan Singh and Shri Rajeshwar Shah as applicants.
- (3) In OA 1302/88 MP No.2582/90 was filed for impleadment of Shri Virdhi Chand as applicant.

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The aforesaid MPs are allowed as the petitioners therein are also similarly situated.

7. We have carefully gone through the records of these cases and have considered the matter. The respondents have raised a preliminary objection in their counter-affidavit to the effect that these applications are not maintainable in view of the judgment of this Tribunal in *A. Padmavalley & Others Vs. C.P.W.D. and Tele Communication* reported in 1990(3) SLJ(CAT) 544, decided by a five Member Bench on 30.10.1990.

8. In Padmavalley's case, one of the questions considered by the Larger Bench was whether a Central Government employee who is a workman has two remedies open to him, namely, to approach the Central Administrative Tribunal or the Industrial Tribunal and whether it is open to him to choose his remedy. The Tribunal, inter alia, held that an applicant seeking a relief under the provisions of the Industrial Disputes Act, 1947, must ordinarily exhaust the remedies available under that Act.

9. In Padmavalley's case, the Tribunal, however, observed that alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226

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in two situations, namely, (i) where there is violation of Article 14 of the Constitution and (ii) where there is a statutory violation. In such case, it is open to the employee to plead violation of Article 14 of the Constitution or allege statutory violation and seek redress without approaching the Industrial Tribunal for adjudication of rights vested under the provisions of the Industrial Disputes Act, 1947. In this context, reference may be made to paras 37 to 39 of the judgment.

10. It follows, therefore, that the preliminary objection raised by the respondents would be valid and tenable only in cases and situations where there is no plea of violation of Article 14 of the Constitution or statutory violation by the authorities concerned.

11. In the applications before us, there is allegation of statutory violation as well as violation of Article 14 of the Constitution, as will be discussed hereinafter. In view of this, we see no force or merit in the preliminary objection raised by the respondents.

12. The applicants before us were recruited after getting their names sponsored by the Employment Exchange. Their service is governed by the terms and conditions of

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employment and hours of work etc. specified in the Certified Standing Orders for the employees of the DMS under the Industrial Employment (Standing Orders) Act, 1946, by the certifying officer and Deputy Chief Labour Commissioner (Central). The applicants have also invoked the provisions of Article 14 of the Constitution to the extent that they are seeking the benefit of the judgment of the Tribunal dated 21.10.1987 in OA 1059/87 and the judgment dated 10.8.1989 in OA 37/1988. Therefore, in our opinion, it will be open to them to seek relief from the Tribunal without first knocking at the doors of the Industrial Tribunal.

12. The workers of the DMS have been classified under the Certified Standing Orders as (a) Casual (b) Badli and (c) Apprentice. A casual worker has been defined to mean a worker who is employed on work of a casual or occasional nature or to fill posts in regular work, provided that a casual worker after continuously working for 3 months in regular work shall be transferred to regular establishment governed by the Fundamental and Supplementary Rules. 'Badli' means a worker who is employed for the purpose of working in place of regular employees who are temporarily absent. A Badli worker

who has actually worked for not less than 240 days in any period of 12 months shall be transferred to regular establishment governed by the Fundamental and Supplementary Rules. These are the salient provisions of the Certified Standing Orders of the DMS relevant in the present context.

13. In the first case of DMS Employees Union (OA 1059/87) decided on 21.10.1987 it was held that those Daily Rated Mates who have 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. In the second case of Shri Pramod Kumar and Others (OA 37/1988) decided on 10.8.1989, it was held that the applicants therein shall be deemed to have been transferred to the regular establishment from 1st November, 1987 and that the striking off of their names from the rolls of Workman of the respondents amounted to retrenchment under Section 2(00) of the Industrial Disputes Act, 1947 and was in violation of Section 25 F thereof. The Tribunal did not pass any order regarding payment of back wages. The intervening period was directed to be

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treated as leave with or without pay as due or dies non, as the case may be. It was further directed that supernumerary post in the regular establishment may be created, if necessary.

14. The applicants before us have contended that they have worked for over 240 days from the respective dates of their appointment as Daily Paid Mates. They have computed this figure after taking into account the sundays and holidays. On the other hand, the respondents have contended that the applicants have not worked for a period of 240 days in any period of 12 months. Their computation does not take into account sundays and holidays. This aspect of the matter was considered in Pramod Kumar's case in which it was held that the sundays and holidays should also be included for the purpose of computing the period of 240 days in a year. In this context, reliance was placed on the judgment of the Supreme Court in H.D. Singh Vs. Reserve Bank of India, 1985 SCC(L&S) 975. We reiterate the same view.

15. The respondents have not produced before us any record to show how the applicants could be treated as Badli Workers and in whose place they occupied the post on which they were appointed.

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16. In the conspectus of the facts and circumstances of the case and following the judgments of this Tribunal in DMS Employees Union Vs. Union of India & Others (OA 1059/87) decided on 21.10.1987 and Pramod Kumar & Others Vs. Union of India & Others (OA 37/88) decided on 10.8.1989, these applications are disposed of with the following orders and directions:-

- (i) We hold that the termination of the services of the applicants is not legally tenable and the same is set aside and quashed.
- (ii) The applicants shall be deemed to have been transferred to the regular establishment after having worked for not less than 240 days in any period of 12 months. For the purpose of computing the period of 240 days in a year, sundays and other paid holidays should also be included.
- (iii) In the circumstances of the case, we do not pass any order regarding payment of back wages to the applicants. However, the intervening period should be treated as leave with or without pay as due or dies non, as the case may be.

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(iv) Supernumerary posts in the regular establishment may be created, if necessary.

(v) The respondents shall comply with the above directions within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

Let a copy of this order be placed in case files bearing No.OA 948/88, OA 1091/88, OA 1031/88 and OA 1302/88.

B.N. Doundiyal
(B.N. DHOUNDIYAL) 27/9/81
MEMBER (A)

P.K. Kartha
(P.K. KARTHA) 2/8/81
VICE CHAIRMAN (J)