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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

DATED THIS 5th day June 1992

Present:

Hon'ble Justice Shri Ram Pal Singh .. Vice-Chairm (J)

Hon'ble Shri P.S. Habeeb Mohamed .. Member (A)

APPLICATION NO.203/1986

Yuva Raj, .. Applicant.
S/o Shri Mahabir Singh,
Moh. Devsthan,
Nai Basti,
Rewari-123401,
Haryana.
(Shri V.P. Sharma,Advocate)

v.

1. The Union of India .. Respondents
C/o The Senior Superintendent(RMS)
'D' Division,
New Delhi-110009.

2. The Post Master General,
N.W. Circle,
Ambala.

3. The Sub Record Clerk,
R.M.S. Office
Rewari.
(Shri K.C. Mittal, Advocate)

This application having come up for orders before this Tribunal today, Hon'ble Shri P.S. Habeeb Mohamed, Member (A), made the following:

ORDER

1. In this application Shri Yuva Raj, a casual labourer in the P&T Department has prayed for the following reliefs -

i) that he beconsidered to be in service without break since 1/8/81 and be paid full back wages and allowances;

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ii) that he be given the costs of the application.

He had filed an amendment to the application stating certain facts to be taken into account and this amendment also been taken into account. The amendment was allowed vide orders of the Tribunal dated 9/1/1987. A reply has also been filed to the application.

2. Even as per the amended application it states that the figures of working days in the Department are to be taken on the basis of experience certificate ~~(Annexure-B)~~ which was given to the applicant by respondent No. 3 and this shows that the applicant had worked 240 days continuously for the period from August 1980 to August 1981. If 52 Sundays and ~~52~~ 17 holidays are added, the applicant had worked for 124 days in 1980 and 51 days in 1981. In a year the applicant worked for 171 days and 52 Sundays and ~~17~~ holidays are added then the total number of days of working comes to 248 days. The amended application says as follows:

"Under Industrial Law the applicant is entitled to the benefit of Section 25(f) of the Industrial Disputes Act" "In these circumstances the applicant's case squarely comes within 2(A) Industrial Disputes Act"

2. The reply of the respondents shows that he worked for 124 days in 1980, 84 days in 1981, 35 days in 1982, 71 days in 1983, 50 days in 1984, 61 days in 1985 and 1 day in the year 1986 and the benefit of 25(F) of the Industrial Disputes Act is not available to Daily Wage Staff who never completed 240 days in a year.

3. The learned counsel for the applicant argued the case that the applicant was entitled to the benefit of Section 25(F) of the Industrial Disputes Act, cited the case of Netrapal Singh and 7 others in III (1990 CSJ

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CAT 274). He referred to a number of decisions of the Supreme Court in support of his stand that the applicant is entitled to the benefits under the Industrial Disputes Act and that he was entitled to be considered as if in continuous service from 1981 and that he is entitled to his back wages also.

4. Having considered the rival contentions and after listening to the counsels of both sides we find that neither in the original application as filed by him nor in the amended application is there any indication that he worked for the required period in any particular period. According to Section 25(F) of the Industrial Disputes Act no work man employed in an Industry who has been in continuous service for not less than one year shall be retrenched by that employer until certain service conditions are satisfied. Section 25(F) of the Industrial Disputes Act reads as follows:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workan has been given one month's notice in wirting indicating the reason for retrenchement and the period of notice has expired, or the workan has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six monthsl and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

We must also refer to section 25 (B) of the Industrial Disputes Act which contains the definition of continuous service. This reads as follows:

"For the purposes of this, Chapter, -(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including

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service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause(1) for a period of oneyear or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

i) one hundred and ninety days in the case of a workan employed below ground in a mine; and

ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

i) ninety-five days, in the case of a workman employed below ground in a mine; and

ii) one hundred and twenty days, in any other case. "

5. The averments made by the applicant do not support the contention that he worked for the required number of days as per Section 25 B in any one year and therefore the benefits of Industrial Disputes Act under 25 (F) will not be available to him. In fact, there is an indication in the orders of the Tribunal dated 5-12-1986 as follows:

"Even on the averments made in the petition, the petitioner has not completed 240 working days in a continuous period of 2 years and, therefore, would not be entitled to the relief prayed for. Thepetitioner asserts that he has in fact worked for 240 days if Sundays and Public holidays are counted; but no foundation has been laid for this assertion by giving the necessary particulars. Petitioner's counsel seeks time to amend the petition."

6. ~~Even~~ After the reply was filed by the respondent the applicant was allowed to file amended application. No detail was given to substantiate the point about the required number of days excepting there is a ~~bold~~ bald statement that if holidays and sundays are ~~are~~ also it will make the required number of days. As mentioned above

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since the averments do not support the case for continuous required number of days we are not able to allow relief under any of the provisions of the Industrial Disputes Act.

7. The applicant referred to a number of decisions of the Supreme Court under which regularisation has been allowed. But excepting saying that their Lordship of the Hon'ble Supreme Court has allowed regularisation in similar cases, no law has been laid down by their Lordships specifically brought to our notice. On the other hand we found in their recent decision by their Lordships of the Hon'ble Supreme Court in Delhi Development Horticulture Employees Union vs. Delhi Administration, (JT 1992 (1) SC 394) ~~their Lordship have sounded~~ a note of caution. In paragraph 23 of their judgement it is stated as follows:

"Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 days more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 days more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden

of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeoparadised on both counts."

8. Since we find that the applicant cannot be given any benefits under the Industrial Disputes Act we are exploring to what extent any relief can be given to him. Certainly the case of Delhi Development Horticulture Employees Union (supra) does not support his case. We would also draw attention to the decision of the Hon'ble Supreme Court in the State of Punjab and others vs. Surinder Kumar and others 1992 (2 Scale pages 1423-31) wherein their Lordships have clearly stated that a decision is available as a precedent only if decides a question of law. Following is what their Lordship have said:-

"A decision is available as a precedent only if it decides a question of law.The respondents are, therefore, not entitled to rely upoh an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgement of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgement is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgement is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgement, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or

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matter pending before it", which authority the High Court does not enjoy."

9. Since no question of law decided by the Hon'ble Supreme Court was referred to by the learned counsel for the applicant, therefore, we cannot give any relief on the basis of the Supreme Court decisions.

10. However, we notice that there are certain Departmental instructions about the regularisation of casual labourers in the case of P&T Department, one dated 20/10/84 (Annexure R-2) produced by the respondents and the applicant has also referred to some of the circulars of the Personnel Department No.49014/7/83 dated 13th October, 1983 and some other circulars. The application of these departmental circulars in the case of regularisation of casual labourer in the various departments has been dealt with by the CAT, Principal Bench in Rajkamal and others vs. Union of India, 1990 (-30 ATC 478) paragraph 23, 24, 25, 26 and 27. It was informed that the P&T Department have framed a scheme for the absorption of casual labour. In paragraph 21 of the CAT's judgement of Rajkamal and Ors v. U.O.I (Supra) the other departmental employees (other than P&T) have been covered, particularly extent of the various circulars of the Personnel Department enjoining absorption. The priorities would be indicated in the P&T Department circulars (Ministry of Communication) and the respondents may take action in accordance with the relevant circulars and orders issued by the Ministry. Even though we find there is a reference to Union of India (C/o Superintendent of Post Offices), and whether the Ministry is appropriately impleaded or not, certain circulars are available with the respondents. While it may not be possible for the

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respondents to give priority to the applicant in the matter of absorption as per the existing circulars of the Government of India, they may re-engage him as casual labourer within a period of 3 months of the date of receipt of a copy of this order considering his previous experience in the Department and continue him as casual labour and then consider him for regularisation at the appropriate time after the priority categories are regularised. This order is being given in the interest of justice and will not operate as a precedent. The respondents are directed accordingly. The applicant will not be entitled for any back wages or any other reliefs except what is stated above.

11. There will be no order as to costs.

5/6/92

(P.S. HABEEB MOHAMED)
Member (A)

5.6.92.

(RAM PAL SINGH)
Vice-Chairman (J)