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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1879/87 198
T.A. No.

DATE OF DECISION 15.12.1989.

Shri Bhagat Singh & Ors. — Applicant (s)

Shri R.K. Kamal — Advocate for the Applicant (s)

Union of India & Ors. — Respondent (s)
Versus

Shri N.S. Mehta — 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 ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(pronounced by Hon'ble Shri P.K. Kartha, V.C.)

The applicants, who had been engaged as daily-wage workers in the Office of the Staff Selection Commission at New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

(i) The illegal order of the respondents preventing the applicants from performing their duties with effect from 24.11.1987 be set aside and quashed and the applicants be treated as on continuous duty without break.

(ii) The services of the applicants be declared as of 'temporary' status.

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(iii) The respondents be directed to take steps to regularise the services of the applicants within a prescribed time limit.

(iv) Any other relief that the Hon'ble Tribunal may grant to extend substantial justice to the applicants.

2. The facts of the case are not disputed. The applicants are matriculates. They were sponsored by the Employment Exchange, Delhi, for employment under the respondents. They were appointed as daily-wage workers in September/October, 1986 and since then they have worked upto 23.11.1986, when the Under Secretary of the Staff Selection Commission, gave verbal orders to them not to report to duty with effect from the next day. They have since then been prevented from entering the office premises and performing the duty.

3. The applicants have stated that the requirement of work still necessitates their continuous employment with the respondents.

4. The applicants have raised the following contentions:-

(i) The workers who render continuous service without break for over 240 days, acquire temporary status in Government service and they are protected under the statutory provisions applicable to temporary Government servants. No notice, or pay in lieu of notice period, was given to them, which is in violation of the statutory rules applicable to temporary employees.

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(ii) They are entitled to the constitutional protection which guarantees to them their means of livelihood.

(iii) While preventing them from performing their duties, the respondents have retained in service other daily-wage workers who were engaged after terminating their services. This is violation of Articles 14 and 16 of the Constitution.

(iv) On the Indian Railways, a casual labourer or a daily-wager who is engaged for a period of 120 days in non-project works and 180 days in the project works, automatically develops a temporary status and is also entitled to the protection of Article 311 of the Constitution. To give a different treatment to similarly employed workers, or daily-wagers under the Department of Personnel & Training, is violative of Articles 14 and 16 of the Constitution because both the departments come under the same Central Government and workers in both the departments are entitled to equal protection of laws.

5. The respondents have raised the following contentions in the counter-affidavit filed by them:-

(i) The application is not maintainable on the ground that no order has been passed by the respondents for adjudication by the Tribunal as envisaged in Section 19 of the Administrative Tribunals Act.

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(ii) The services of the applicants who had been engaged on daily-wage basis, are no longer required. They are not in the regular employment of the Government.

(iii) Under Central Government orders dated 21.3.1979, completion of two years' service without break with 240 days service in each year is one of the requirements for consideration of a casual worker for regularisation against a Group 'D' vacancy. The applicants do not fulfil the same. The respondents have also denied that the applicants have acquired temporary status within the meaning of the C.C.S. (Temporary Service) Rules, 1965.

(iv) The applicants have no constitutional or legal right for continuous engagement as casual labourers.

(v) As to the contention of retaining juniors while terminating the services of the applicants, it has been alleged that the question of maintaining seniority list of casual workers does not arise. The respondents have denied the contention regarding violation of Articles 14 and 16 of the Constitution. The casual workers are not public servants.

6. The question of jurisdiction of this Tribunal to adjudicate upon the service matters of daily-wage workers and casual labourers has been considered by the Full Bench

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in Rehmat Ullah Khan & Others Vs. Union of India & Ors., 1989 (2) SLJ 293. The Full Bench has given the opinion that although a casual labourer does not hold a civil post, he is in the service of the Union and, consequently, this Tribunal has the jurisdiction to entertain his case. The Full Bench considered the question of casual labourers and daily-wage workers in general and the position obtaining in the Railways in particular. The Full Bench noted that there are extensive rules and provisions for casual labour in the Railways. There is a provision for their absorption after a certain period of time when they became entitled to the benefits of a temporary Railway servant.

7. The applicants before us were engaged by the Staff Selection Commission which is under the Department of Personnel & Training. The question arises whether the applicants who work in Staff Selection Commission can claim parity of treatment with those of the casual labourers working in the Railways. The Supreme Court has held in C.A. Rajendran Vs. Union of India & Ors., A.I.R. 1968 S.C. 507 at 513 that there will be no violation of Article 14 if different departments of the Government have different rules governing their employees. In our opinion, the applicants cannot claim as a matter of right that they should also be given the same protection as that of their counterparts in the Railways.

8. The various Government departments have resorted to the practice of engaging casual workers for a variety of reasons. The Department of Personnel have evolved

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policy guidelines for the engagement of such persons and the same have been reviewed from time to time. The respondents have drawn attention to an Office Memorandum issued on 21st March, 1979, according to which, casual employees who have put in at least 240 days as casual labourers (including broken periods of service) during each of the two years of service, shall be eligible to get regularised. This also would depend on the availability of vacancies and subject to the other conditions of suitability laid down in the said Office Memorandum.

9. In Rehmat Ullah Khan's case, the Full Bench has referred to the question as to what is the exact status of a casual worker/daily-wager/daily-rated worker in a Central Government Establishment or Department and what relief he would be entitled to in a given case. As the Full Bench was not seized of the matter, answer to the question was left open. In our opinion, the extent of relief to which such a person would be entitled to in a given case, would depend upon the applicable rules and regulations as also the provisions of Articles 14 and 16 of the Constitution. The provisions ~~xxxxx~~ appliable to the applicants before us are contained in the O.M. dated 21.3.1979. In addition, the protection of Articles 14 and 16 is also available to them.

10. The learned counsel for the applicant stated that the termination of the services of the applicants by the impugned oral order was mala fide and with a view to depriving them from developing a right to regularisation

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in Group 'D' posts. He also contended that if the Sundays and other holidays during which they were required to render service are also counted, the period of service put in by them would work out to more than 240 days.

11. The applicants have not produced any material before us to prove mala fides on the part of the respondents. This plea is, therefore, rejected. We also do not agree with the contention that the Sundays and other holidays should also be taken into account for the purpose of computing 240 days in each of the two years of service required for regularisation. The reason is that only a worker who is entitled to the protection of the Industrial Disputes Act, would be entitled to computation of period of service by adding Sundays and other holidays. Admittedly, the Staff Selection Commission is not an industry and the applicants are not workmen within the meaning of the Industrial Disputes Act, 1947.

12. Another contention raised by the applicants is that they have developed a temporary status within the meaning of the C.C.S.(Temporary Service) Rules, 1965. In our opinion, the C.C.S. (Temporary Service) Rules, 1965 apply only to the holders of civil posts and not to daily-rated workers,who are not holders of civil posts. While temporary government servants governed by the C.C.S. (Temporary Service) Rules, are entitled to the protection of Article 311 of the Constitution, the daily-rated workers are not entitled to the same.

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13. We are, however, of the opinion that the applicants are entitled to the protection of Articles 14 and 16 of the Constitution. Article 14 guarantees the right to equality and strikes at any arbitrary action or decision. It is in this context that we see force in the contention of the applicants that if their juniors are retained while terminating their services, it will amount to arbitrariness and would be violative of Articles 14 and 16 of the Constitution. It is not the case of the respondents that they were disenganged on account of any misconduct on their part, or by way of any disciplinary action. The well-known principle of law is "last come, first go".

14. The plea of the respondents is that they are not maintaining any seniority list of casual workers. This is an over-simplification of the factual position and cannot be accepted. There is no denial in the counter-affidavit as regards retention of daily-wage workers who were engaged by the respondents on subsequent dates. In case, persons engaged along with the applicants, or on subsequent dates have been retained while terminating the services of the applicants, it would be legally and constitutionally unsustainable, whether or not the respondents maintain a seniority list of daily-wage workers. Furthermore, in case the respondents need the services of daily-rated workers, the applicants deserve to be given preference over the outsiders.

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

(i) The respondents shall take the applicants back to duty as daily-wage workers in case

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they have retained in service daily-wage workers who were engaged along with the applicants or on subsequent dates and if they are still continuing in service.

(ii) Without prejudice to what is stated in (i) above, in case the respondents need the services of daily-wage workers, respondents shall give preference to the applicants over their juniors or outsiders.

The parties will bear their own costs.

(D.K. Chakravorty) 15/12/1989
Administrative Member

(P.K. Kartha) 15/12/89
Vice-Chairman(Judl.)