IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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NEW DELHI

R.A
~~R.A.~~ No. 25 of 1990
O.A. No. 2115/ 1989

DATE OF DECISION 4th April 90

Raj Kumar Datiyal and Others Applicant(s)

_____ Advocate for the Applicant(s)

VERSUS

Union of India and others Respondent(s)

_____ Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri P. Srinivasan, Member (A)

The Hon'ble Shri T.S. Oberoi , Member (J)

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 Whether to be circulated to other Benches? Yes

4.4.90
M(J)

JUDGMENT

Per P. Srinivasam, Member (A)

By this application, the applicants in O.A. No.2115/89 want us to review our order dated 17.11.1989 by which the said OA was dismissed by us at the admission stage itself. In terms of Rule 17(iii) of the Central Administrative Tribunal (Procedure) Rules, 1987, we proceed to dispose of this application by circulation among us.

2. As we see it, the application for review is argumentative and dicloses neither an error apparent from the record in our earlier order nor any fresh material which has a bearing on the outcome of the original application. It could be rejected on that ground itself as we are not expected to reappraise the whole case and come to a different conclusion in review as if we were sitting in appeal over our own order. However, since there is a suggestion in the application that we have overlooked judgments of the Supreme Court on the subject and since we are deciding the matter by circulation we consider it proper to examine in some depth the contentions raised in the present application.

3. We may state at the outset that OA No.2115/89 came for admission before us on 17.11.1989 with notice to the respondents. Learned counsel for the applicants, Shri T.S. Ahuja and learned counsel for the respondents, Shri P.H. Ramchandani were heard at some length and the order dismissing the application was dictated in open court immediately thereafter in the presence of the parties. We find that the present application for review has been filed not by the same advocate who represented the applicants when the original application was heard,,viz.; Shri T.S. Ahuja but by Sunil Malhotra and Associates.

4. Be that as it may, in the original application, filed on 19.10.1989, the applicants - there are ten of them - who had been engaged as casual labourers in the office of the respondents, 7 of them from 18.1.1989, two from 6.2.1989 and one from 3.4.1989 prayed for a direction to the respondents to regularise their services from the date of completion of six months of continuous employment. At the hearing of the case, learned counsel for the respondents, Shri Ramchandani who opposed admission of the application, submitted that there were, in all, 33 persons (including the ten applicants) who had been engaged as casual labourers in the office of the respondents. The respondents had undertaken a review of their need for casual labourers and had found that they could absorb 19 of them in regular vacancies after which they would not need the services of casual labour at all. Therefore, they had either disengaged or would shortly disengage 14 persons including the 10 applicants. The seniormost 19 persons were absorbed and the services of the remaining 14 would be dispensed with as no longer required. On our specific query, Shri Ramchandani informed us that it was not the intention of the respondents to engage casual labour any more but if they had to do so, they would not engage any person other than the 14 persons whose services were now being dispensed with. He submitted a written memo to this effect.

5. In view of the clear assertion by counsel for the respondents that as a result of a review undertaken by them, the respondents had decided to absorb 19 out of 33 causal labourers in regular service after doing which no work would be available for ~~when~~ engaging casual labour, we dismissed the application

with the direction that if the respondents decided to recruit casual labour in the future, the 14 persons who were being discharged including the applicants should be given preference in the order of their seniority over other persons.

6. The points made in this Review Application are these: that the applicants had been engaged by the respondents continuously for more than 240 days and had thereby "acquired the character/status of regular employees in accordance with the various Supreme Court decisions" which are binding on all courts in India in view of Article 141 of the Constitution; that they had been entrusted with work of a regular nature and not of a casual nature; that they had been sponsored by the employment exchange when engaged initially; that the respondent department "was well aware that ever increasing workload will be couped (sic) with only by employing a requisite number of casual workers"; that any person who had "incurred (sic) six months of service in any Government department is entitled for regularisation in service with the concerned department", the object being "to reduce the plight of unemployment faced by the weaker sections of the society"; that the decision of the respondents to discontinue the services of the applicants was arbitrary; that work in Government departments is ever increasing and that there could be no question of "non-requirement"; that we should not have gone by oral submissions made before us; that the application should not have been disposed of at the preliminary stage without going into

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the merits but should have/clubbed with other petitions concerning casual labour to be heard by a specially constituted bench. The application then goes on to pray for a direction to the respondents that such of the applicants who are still in employment be retained in service and those whose services had been terminated be considered for fresh appointment. The applicants also want that the original application be listed for regular hearing with other similar applications and the cases of the applicants be considered for regularisation.

6. We may now refer to the law on the subject as laid down by the Supreme Court. As we understand the various decisions handed down by the Supreme Court in cases involving casual labour, it has nowhere been said that casual labour recruited to meet exigencies of work for short periods cannot under any circumstances be discharged at all. Nor has it been held that after 240 days of service, a casual labourer automatically acquires the status of a regular employee, much less that after six months of service, a casual employee becomes automatically entitled to regularisation. However, when such persons continue to be engaged for long periods without regularisation or being paid normal salary and allowances and their services are sought to be terminated thereafter, that would be patently unjust; while on the one hand, their engagement continuously for several years would suggest that work was available on a regular basis to retain them as regular employees, on the other, by the sheer lapse of time, they would have become overaged and unfit for service elsewhere. It would be unfair labour practice and exploitation to extract work of a regular

nature over long periods from them while yet denying them normal wages and a certain tenure as available to their counterparts appointed regularly. It was in such circumstances that the Supreme Court held that the so called casual employees - for they were for all intents and purposes no different from regular employees in those cases - should not only be paid wages equal to those of corresponding regular employees, but should also be considered for absorption in the regular establishment of the Government. Even at that, in Dhirendra Chamoli's case ATR 1986 SC 172 and Surinder Singh's case (AIR 1986 SC 584) where the petitioners had worked as casual labour for several years, the Supreme Court merely expressed a hope that action would be taken to regularise them (after continuous employment for more than six months in Surinder Singh's case).

7. In Daily Rated Casual Labour V. Union of India (AIR 1987 SC 2342 - petitioners working as casual labour for upto ten years), UP IT Department CPSW Association V. Union of India (AIR 1988 SC 517 - contingent staff rendering service for "a large number of years"), Delhi Municipal Corporation Karamchari Ekta Union v. P.L. Singh (AIR 1988 SC 519 - petitioners working as casual labour for more than eight years) and General Secretary Bihar State Road Transport Corporation v. Presiding Officer, Industrial Tribunal (JT 1988(1) SC 29 - petitioners working as casual labour for "a number of years") - all of them decided before we passed our original order - the Court issued uniform directions to the respondents to prepare a reasonable scheme for regularisation of casual labourers who had been

working for more than one year "as far as possible". Dharwad District PWD Literate Daily Wage Employees Association v. State of Karnataka - decided after our order under reference - (1990 1 SVLR 127 - daily and monthly rated workers in different departments continuously for 15 to 20 years), was an even more heart rending case in which the Supreme Court approved a scheme of absorption after 10 years of continuous employment as casual labour.

8. In the present case, the applicants had all been admittedly appointed only in 1989 and had not completed even one year of employment when the application came to be heard, the respondents had themselves taken timely action to review cases of all casual employees and had decided to absorb 19 of them in regular employment and to discharge the remaining 14 after assessing the work available and written submission was made before us through their learned counsel that no fresh persons other than those sought to be discharged would be considered for casual appointment if any, in future. In these circumstances, there was no way we could direct the respondents to continue the applicants in employment or to consider their cases for regularisation as in the cases before the Supreme Court. All that we could do was to direct that if in the future, casual labour was to be engaged by the respondents, the applicants and others now sought to be discharged should be preferred over others and that we did.

9. Along with the review application, a statement has now been appended indicating that as at the end of December 1989 (1)

and in some cases (3) by the end of January 1990, four applicants had put in more than 240 days of service. While this does not alter the merits of the cases as discussed above, it must be remembered that the original application was filed on 19.10.1989 and decided on 17.11.1989, on which dates, going by the statement now filed, it would appear that none of the applicants had completed 240 days of service. However, the silver lining disclosed by this statement is that despite their decision to absorb 19 casual labourers in regular service and to discharge the remaining 14 as surplus to their needs - noticed in our order - at least some (3) of the applicants were retained in employment till the end of January 1990. In our order under reference, we had clearly prohibited induction of new persons as casual labour by the respondents other than those like the applicants who had already worked in that capacity in the past and in that way we sought to protect the interests of the applicants to the extent we thought they were entitled to protection. If the applicants feel that we went wrong in doing so, their remedy does not lie in review.

10. There is nothing in law against a court or ~~the~~ this Tribunal acting on oral submissions of facts made before it by counsel representing one party in the presence of counsel for the opposite party as in this case. Nor is there any prohibition against an application being disposed of at the preliminary or admission stage after hearing counsel for both sides as we did in this case. In our opinion, the respondents had

satisfactorily explained why they decided to discharge surplus casual labour and so their action was not arbitrary. We did go into the merits of the case and recorded what appeared to us to be the correct conclusion.

11. If we have dealt with the matter rather more elaborately than we would ordinarily have done while disposing of a review application, it is in order to make explicit what was implicit in our earlier order, viz., that we were aware of the decisions of the Supreme Court on the subject, that we are second to none in our respect and veneration for the highest court in the land and that the decision rendered by us is in no way inconsistent with the law laid down by the Supreme Court.

12. In view of the above, the Review Application is dismissed.

MEMBER (A) MEMBER (J) 4/4/90

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