

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1075/1990
T.A. No.

199

DATE OF DECISION 26.4.1991

<u>Shri Tej Pal</u>	Petitioner
<u>Shri K.N. R. Pillai</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. M.M. SINGH, 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? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,

Vice Chairman(J))

The issues raised in this application are identical with those in OA 2052 of 1989 and connected matters (Shri Rameshwar and Others Vs. Union of India through Director General, Doordarshan) which has been disposed of by judgment dated 26-04-1991 separately. The present application is also disposed of in accordance with the directions contained in Para 11 of the said judgment.

M. M. Singh
(M.M. SINGH)
MEMBER (A)

P.K. Kartha
26/4/91
(P.K. KARTHA)
VICE CHAIRMAN(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date of decision: 26.4.1991

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|-----|--|---------------|
| (1) | OA 2052/1989
Shri Kameshwar & Another | ...Applicants |
| (2) | OA 356/1990
Shri Naveender Kumar | ...Applicant |
| (3) | OA 411/90
Shri Laxmen Singh | ...Applicant |
| (4) | OA 772/90
Shri Khemanand Khuleba | ...Applicant |
| (5) | OA 2378/90
Shri Dalbir Singh | ...Applicant |

Vs.

Union of India through
the Director General,
Doordarshan

...Respondents

For the applicants in
(1) and (3)

...Shri K.N.R.
Pillai, Counsel

For the applicant in (2)

...Shri R.L. Sethi,
Counsel

For the applicant in (4)

...Shri T.C.
Aggarwal, Counsel

For the applicant in (5)

...Shri V.S.R.
Krishna, Counsel

For the respondents in
(1) to (5)

...Shri M.L. Verma
Counsel.

COMAM:

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

THE HON'BLE MR. M.M. SINGH, 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.
Karttha, Vice Chairman(J))

In a batch of applications filed by the

casual labourers engaged in the Directorate General,
Doordarshan, common questions of law have arisen and
it is proposed to dispose them of by a common judgment.

2. Doordarshan had adopted a novel method of
engaging casual labourers, which has been called in
question in these batch of applications. Casual
workers are engaged by verbal orders and discharged
by verbal orders at the end of 90 days. Immediately
another batch of casual workers is taken in replacement.

This goes on and on. The apparent object appears to be
to prevent them developing any right by virtue of service
rendered by them over a period of time. Is this legally
permissible? That is the question before us.

3. The basic stand of the respondents is that
the applicants are not holders of civil posts and as
such they are not entitled to relief from the Tribunal,
that they have been engaged as casual labourers for
casual nature of work, that they have been engaged on
contractual basis for a specific period, that the claim
of the applicants that they should not be replaced by
another group of casual employees is not justified
as they themselves had replaced an earlier group on
their engagement and that the applicants are not
entitled to the pay and allowances of regular Group 'D'
employee or for leave and other conditions of service.

The respondents have relied upon numerous judicial pronouncements in support of their contentions¹.

4. It is ~~true~~ that the casual labourers are not holders of civil posts, as has been held by the Supreme Court in State of Assam Vs. Kanak Chandra, AIR 1967 SC 884. The only consequence of this is that they are not entitled to the protection of Article 311 of the Constitution. It cannot, however, be denied that even casual labourers are entitled to the protection of Articles 14 and 16 of the Constitution. While Article 14 provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, Article 16 stipulates that there shall be equality of opportunity for all citizens in matters relating to

employment or appointment to any office under the state. In a catena of decisions, the Supreme Court has observed that state action should be tested on the touchstone of fairness, justness and reasonableness in view of the valuable guarantees contained in Articles 14 and 16 of the Constitution. Conversely, state action should not be arbitrary, discriminatory or unreasonable.

Cases relied upon by the learned counsel of the respondents:-

AIR 1967 SC 884; 1989(10) ATC 656; 1990(2) SLJ 169; 1987(4) SLJ 785; 1990(1) 56; 1988(7) ATC 351; 1990(1) SLJ 624; 1987(2) SLJ 429; 1989(3) SLJ 306; 1990(13) ATC 142; 1988(8) ATC 929; 1990(3) SLJ 47; 1990(3) SLJ 28.

5. We have no doubt in our minds that the policy of 'hire and fire' adopted by the respondents in the instant case is violative of the provisions of Articles 14 and 16 of Constitution and is liable to be struck down on that score. In *Dhirendra Chamoli and Another Vs. State of U.P.*, 1986 SCC(L&S) 187, while rejecting the contention of the Central Government that the casual workers employed in the Nehru Yuvak Kendras are outside the pale of protection of Article 14 of the Constitution, the Supreme Court observed as follows:-

"It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and, therefore, they cannot claim more. This argument lies ill in the mouth of the Central Government for it is all too familiar argument with the exploiting class and a welfare state committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with the full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution".

6. In *Surinder Singh Vs. Engineer-in-Chief, CPWD*, 1986 SCC(L&S) 189, the Supreme Court recorded its regret that many employees were kept in service on a temporary daily wage basis without their services being

regularised. The Supreme Court expressed the hope that the Government would take appropriate steps to regularise the services of all those who had been in continuous employment for more than six months.

7. In Central Inland Water Transport Corporation

Vs. Brojo Nath Ganguly, 1986 SCC(L&S) 429 at 436,

the Supreme Court observed that at least in

certain areas of the law of contracts, there can be

unreasonableness or unfairness in a contract or a

clause in a contract where there is inequality or

bargaining power between the parties. In the instant

case, there is lack of fairness and reasonableness in

the alleged oral contractual engagements which the

respondents are seeking to defend before us.

8. The learned counsel of the applicants have

drawn our attention to a D.O. letter No.3/29/90-S-II

dated 7.9.1990 written by Miss. P.S. Sakuntala, Addl.

Director General, Doordarshan to Shri Rajmani Rai,

Director, Doordarshan Kendra, according to which there

are as many as 90 casual labourers engaged by Delhi

Kendra on any given day. There are 23 sanctioned posts

of peons and 13 posts of safaiwala.

9. In our view, the policy followed by the

respondents is highly arbitrary and discriminatory and

violative of Articles 14 and 16 of the Constitution in

as much as there is an element of pick and choose in

the pursuit of their policy. There is no rationale or logic in replacing one set of casual labourers daily engaged after holding a selection from among the candidates sponsored by the Employment Exchange by another set of employees similarly sponsored by the Employment Exchange every three months. This leaves scope for arbitrariness, if not corruption, at the level of the Employment Exchange and of the respondents. We hold that this is impermissible in law.

10. In order to make the system of engagement of casual labourers within legal and constitutional limits, it is imperative that the respondents should evolve a rational scheme for regularising them.

11. The Supreme Court has directed the Government to prepare suitable schemes for regularising casual labourers (vide *Inder Pal Yadav Vs. Union of India*, 1985 SCC(L&S) 526; *Daily Rated Casual Labour Employed under P&T Vs. Union of India*, 1987(2) SCALE 844; *U.P. Income Tax Department Vs. Union of India*, 1988(2) SLJ(SC) 38; *Delhi Municipal Corporation Karmachari Ekta Union Vs. P.L. Singh*, 1987 (2) SCALE 1370; *Dharwad District P.D. Literate Daily wage Employees Vs. State of Karnataka*, JT 1990(1) SC 343). In our view, the respondents should frame a suitable

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/scheme

/for absorption of the casual labourers within a

period of four months from the date of receipt

of this order. Pending this, the respondents shall

allow the applicants to continue to work as casual

labourers in their office as long as there is

requirement for such workers. In case the

disengagement of some casual labourers becomes

unavoidable, it should be on the principle of 'last

come first go'. Till the applicants have been

regularised, the respondents may not resort to fresh

recruitment through Employment Exchange or otherwise.

Till they are regularised, the wages to be paid to them

should be in accordance with the scale of pay of the

post held by a regular employee in a Group 'D' post.

After regularisation, they should be placed on par

with regular Group 'D' employees in respect of their

service conditions and benefits.

12. The applications are disposed of on the

above lines. Let a copy of this order be placed in

all the case files.

(M.M. SINGH)

ADMINISTRATIVE MEMBER

(F.K. KARTHA)

VICE CHAIRMAN(J)