

In the Central Administrative Tribunal
Principal Bench, New Delhi.

Reqn. Nos.:

Date: 11.2.1992.

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| 1. OA-1489/90 | 9. OA-2668/90 |
| 2. OA-1536/90 | 10. OA- 12/91 |
| 3. OA-1594/91 | 11. OA- 265/91 |
| 4. OA-1618/90 | 12. OA- 325/91 |
| 5. OA-1741/90 | 13. OA- 622/91 |
| 6. OA-1926/90 | 14. OA- 665/91 |
| 7. OA-2255/90 | 15. OA- 771/91 |
| 8. OA-2664/90 | 16. OA- 791/91 |
| | 17. OA-2723/91 |

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| 1. Shri T. Dominic & Others |) <div style="position: absolute; left: 600px; top: 400px;">..... Applicants</div> |
| 2. Shri Anil Kumar & Others | |
| 3. Shri Radhey Pandit | |
| 4. Shri Shankar Manjhi & Ors. | |
| 5. Shri Rajesh Kumar & Anr. | |
| 6. Shri Oshiar Manjhi & Ors. | |
| 7. Shri Chaman Lal | |
| 8. Shri Shyam Lal & Ors. | |
| 9. Shri Kamal Kishore & Ors. | |
| 10. Shri Vishnu Dev Yadav | |
| 11. Shri Sunder Singh Rana & Ors. | |
| 12. Shri Ram Niwas Mishra | |
| 13. Shri Rajbir Singh & Ors. | |
| 14. Shri Satyender Manjhi & Anr. | |
| 15. Shri Sanjay Kumar | |
| 16. Shri Ashok Kumar Manjhi & Anr. | |
| 17. Shri Vijay Paswan & six Ors. | |

vs.

Union of India & Another

..... Respondents

For the Applicants

..... Mr. E.X. Joseph,
Advocate with
Mr. B.N. Bhargava,
Advocate, and Sh.
A.K. Bhardwaj, Advocate
S/Shri N.S. Mehta,
& M.L. Verma,
Advocates, and
Ms. S. Stephen,
Advocate.

For the Respondents

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D.K. Chakraverty, 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*

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

The issues involved in this batch of applications are identical and it is proposed to deal with them in a

common judgement.

2. The Staff Selection Commission (S.S.C.) has been engaging casual labourers in their office for some time past. Presently, there are 72 casual labourers working in their office of which, two have been made regular and 70 are continuing due to the stay orders granted by this Tribunal. In these applications, there are 50 casual labourers in all. They are aggrieved by the impugned orders of termination issued on various dates and are praying for their reinstatement and regularisation in suitable posts.

3. It may be observed at the outset that the issues raised in these applications had figured in two earlier cases - OA-1879/89 (Bhagat Singh & Others Vs. Union of India & Others) which was disposed of by judgement dated 15.12.1989 and OA-948/90 (Kamleshwar Prasad Vs. Union of India & Others) which was disposed of by judgement dated 16.7.1990. In Bhagat Singh's case, the Tribunal directed the respondents to take the applicants back to duty as daily-wage workers in case they had retained in service daily-wage workers who were engaged along with the applicants, or on subsequent dates and if they still are continuing in service. The respondents were further directed that in case they needed the services of daily-wage workers, they should give preference to the applicants over their juniors and outsiders.

4. In Kameshwar Prasad's case, the Tribunal observed that the S.S.C. is a part of the Department of Personnel & Training and that if after the additional work arising out of an examination gets over, and casual workers engaged in this connection have to be discharged, they can be considered for engagement as casual labourers in any of the other Wings in the Department of Personnel & Training and not necessarily in the office of the S.S.C. The respondents were directed to prepare a list of persons engaged as casual labourers from time to time, according to the length of service put in by them in that capacity. The list could be common to the offices of both, the Department of Personnel & Training and the S.S.C. It was further observed that the same list should be used for regularisation of casual labourers in that order as and when vacancies arise before considering outsiders.

5. The learned counsel for the applicants have stated before us that the S.S.C. has not prepared any such list and is resorting to the practice of hiring and firing casual labourers. As against this, the learned counsel for the respondents argued that casual labourers are engaged in the S.S.C. as and when the contingencies or exigencies of work so demand. They have admitted that when one set of casual workers is attending to a job,

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and, in the meantime, another job arises, the S.S.C. engages another set of casual workers for the 1st job. As soon as the work for which one set of casual labourers was engaged is over, the casual workers are disengaged even though the other set of casual work continues because the work for which they were engaged is not yet over.

6. In the light of the aforesaid contentions of both the parties, the Tribunal passed an order on 30.5.1991 to the effect that the question of regularisation of casual labourers in the S.S.C. should be viewed in its totality and for this purpose, the Tribunal should have before it the relevant data for the past five years. The information sought from the respondents was about the examinations which were held every year, the number of parties therein, the casual labourers engaged in connection with the holding of such examinations, etc., the number of casual labourers engaged each year monthwise, the examinations which are scheduled to be held for the next one year or so, the number of candidates likely to participate in the examination, and the requirement of casual labourers in connection with these examinations. The respondents have furnished the relevant data before the cases were taken up for final hearing on 5.2.1992.

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7. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. We have also duly considered the data furnished by the respondents, ^{through their counsel, Mr. N.S. Mehta,} the written submissions made on behalf of the applicants, and the case law cited by them during the hearing.

8. From the data furnished by the respondents, it would appear that the S.S.C. has been conducting 16 examinations every year spread out, more or less, throughout the year. The number of candidates are quite considerable in each year. The tentative programme of examinations for the year 1992 also indicates the same trend. It will also be noticed that from 1987 to 1991, the S.S.C. has been engaging the casual labourers of which the lowest figure is 54 and the highest figure is 150 ^{in a month.} On an average, they have been engaging about 60-70 casual labourers every month during these years. In the submissions made by the respondents, it has been stated that the S.S.C. has decided to entrust the work relating to the processing of applications at the pre-examination stage to Data Processing Agency, who have gained expertise in handling such work with professional skill. After the work is so entrusted to such Agency, the number of casual labourers to be engaged in the S.S.C. would come down.

* Case law cited by the Applicants:

1985(2) SLJ 58; 1985 (2) SLR 248; 1986 (1) SCC 637; 1986 (1) SCC 639; AIR 1987 SC 2342; J.T. 1989(Supp.)SC 364; JT1990 (4) 27; 1987(Supp.)SCC 497; AIR 1979 SC 1628; 1985(3) SCC 545; 1988 (7) ATC 313; 1988 (2) SLJ(SC) 38; 1990 (12) ATC 902; 1990 (3) SLJ(CAT) 185; 1990(13) ATC478; 1987 (3) SLJ (CAT) 484; 1990 Current SLJ(3) 274; and 1992 (1) SLJ (CAT) 97.

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drastically. They have also submitted that the above decision has been taken keeping in view the "bad experience" which they had in the past few years when the applications received in response to various advertisements were handled by the casual labourers. According to them, "a large number of problems" were thrown up due to "mishandling" of applications by the "unskilled labourers". It was, therefore, necessary to find ways and means to eliminate such shortcomings in handling documents of sensitive nature and also improve the efficiency, accuracy and speed so that lakhs of job seekers should not be kept guessing till the last minute. In order to avoid a large number of public complaints on account of mistakes due to the handling of applications by unqualified persons, the S.S.C. decided to get the work done by Data Processing Agencies, who are professionals in the field. They have stated that the services of such Agencies are being utilised by other major recruiting Agencies in the country, such as the Railway Recruitment Boards, Banking Service Recruitment Boards, and Universities etc. Hence, there will not be any need for engaging in future such large number of casual labourers. However, a small number of casual labourers may be engaged sometimes, when large number of parcels and dak are received and they

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are required to be moved to different floors within the building of the Commission and some other work of casual nature. The number and time of engagement of casual labourers for such intermittent work, would depend on the exigencies of the job. They have also stated that it is not possible to regularise the services of daily-wagers because there are no vacancies available. As per the existing rules/instructions of the Government, a daily-wager who is otherwise eligible, may be considered for regular appointment to a Group 'D' post only if -

- (a) there is a vacancy in existence to be filled in on direct recruitment basis; (b) the person concerned is in possession of requisite qualifications, etc.; and
- (c) no suitable surplus employee is available with the Surplus Cell of the D.G.E.T. and they have no objection to filling up the vacancy through other permissible channels.

9. The nature of work performed by the casual labourers has been enumerated in the rejoinder of 14.11.1964 as follows:

- (a) Removing Postal Orders/cheques from the folders of the candidates and sending them to the Examination Section; (b) unloading of answer sheets/question papers and then shifting the same to the concerned areas.

(c) making bundles of the answer-sheets/
question papers;

(d) helping the postal employees in despatching
the bundles;

(e) carrying out any work in any of the
Examination Centres in Delhi which are
about 200;

(f) loading of answer sheets in trucks or tempos
for being sent to Lodhi Road Post Office;

(g) receiving the bundles when they are received
from the Post Office;

(h) opening of bags in office;

(i) work involved in despatching copies of
magazine Lodestar which is despatched to
destinations all over the country; affixing
of address slips on the bundles. All the
work done by them is the unskilled Class IV
employees' work and there is no specialisation
or expertise involved.

10. Shri M.L.Verma, Advocate, appearing for the

respondents, stated that the aforesaid description of duties

given by the applicants is correct. To our mind, none of

the duties mentioned above, can be entrusted to a Data

Processing Agency. The work essentially is of a manual

and unskilled nature.

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11. At the same time, it is not for the Tribunal to give any mandatory directions to the respondents not to entrust certain items of work presently handled by the casual labourers to a Data Processing Agency in the interest of efficiency, accuracy and speed. The applicants have stated in their written submissions that the experience of the S.S.C. in holding a small examination like the Primary Teachers' Examination with the help of the Data Processing Agency, is not encouraging. They have alleged that a lot of mistakes in the admission certificates issued to the candidates had occurred, and that more than 10,000 candidates came to the S.S.C. to enquire about their admission certificates. We do not wish to comment on the above allegations made by the applicants. It is a matter of public knowledge that some other recruitment Boards, like the Indian Service Recruitment Boards, and other recruitment boards, are in fact taking the help of Data Processing Agencies. In case, the respondents have any experience or experiment on Data Processing Agencies, the Tribunal would ^{not} interfere with their policy decision.

12. During the arguments, the learned counsel for the applicants urged that there is a human factor involved

in the process of recruitment. A sizeable number of

casual labourers for about three years. Some of them may have become over-aged by now for seeking employment in regular posts in Government through direct recruitment. The learned counsel for the respondents ^{fairly} stated that the human factor has to be kept in view in deciding these cases.

13. In big departments like the Railways, and the Posts & Telegraphs, schemes have been prepared for regularising casual labourers pursuant to the directions given by the Supreme Court. Such a scheme may not be applicable to the S.S.C. which is a comparatively smaller organisation with a specialised function. The work of the S.S.C. is also subject to fluctuation as would appear from the data furnished by the respondents.

14. In our view, even if the respondents entrust some work to Data Processing Agencies in the future, to resolve the problem of casual labourers in their office, a rational and fair scheme should be prepared by the respondents. ^a Including the broken periods of service. These who have worked for 240 days or more/ should be covered by such a scheme. Simultaneously, the respondents should also make a realistic appraisal of the requirements of Group 'D' staff to cope with the work being handled by casual labourers at present on a continuing basis throughout the year. The data furnished by them indicates the need for such an appraisal, having regard to the average number of casual labourers engaged every month over the period of

last five years and the likely future workload. The required number of posts should be created ^{by the respondents} to regularise the requisite number of persons after proper assessment and after satisfying themselves that the ^{persons concerned} are suitable in all respects. Those who cannot be appointed in regular posts, should be borne on a panel from which the engagement should be made as and when the need arises in preference to outsiders. The names of persons who cannot be appointed in regular posts, should also be forwarded to the Department of Personnel and Training with the request that they may be considered for engagement in various other ministries/departments/attached/subordinate offices, depending on the length of service put in by them.

15. A scheme of the nature indicated above, shall be prepared by the respondents within a period of four months from the date of communication of this order. Till such a scheme is prepared and put into operation, we direct that the respondents shall not disengage the services of the applicants. The applications are disposed of on the above lines. There will be no order as to costs.

16. Let a copy of this order be placed in all the case files.

(D.K. Chakraverty)
Administrative Member

(P.K. Kartha)
Vice-Chairman (Judl.)