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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No.OA.1599/90

Date of Decision: 3.1.92

Shri Avadesh Kumar

Applicant

Mrs. Rani Chhabra

Counsel for the applicant

Union of India

Vs.

Respondents

Shri P.P. Khurana

Counsel for the respondents

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The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

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. Member Shri B.N. Dhoundiyal)

This OA has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by Shri Avadesh Kumar and Nawab Singh, against the following orders issued by the Department of Telecommunication:

(a) Order dated 22.4.87, issued by the Department of Telecommunication to its various regional Departments to retrench all daily rated Mazdoors recruited after 30.3.85.

(b) Notice dated 25.7.89, by which the services of applicant No.1 were to be terminated w.e.f. 25.8.89.

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(c) Notice dated 29.9.88 by which the services of the applicant No.2 were to be terminated w.e.f. 1.11.88.

2. The first applicant had worked for 920 days and was retrenched on 25.8.89 and the second applicant had worked for 563 days and was retrenched on 1.11.88. The applicants claim that they were entitled to regularisation under the scheme prepared by the Department pursuant to the directions of the Supreme Court. The Department, however, fixed an arbitrary cut-off date on 30.3.85 and since the applicants were recruited after this date, their services were terminated. According to them, the work has increased manifold in this Department and the existing sanctioned strength of staff is quite inadequate. Casual labourers are deployed to do work similar to that of regular labourers but they are not made permanent. Artificial breaks are given to them to deny the benefit of regularisation. Pursuant to the directions given by the Supreme Court in *Bharatiya Dak Tar Mazdoor Manch Vs. Union of India and Others*, AIR 1987 SC 2342, the Department of Telecommunication prepared a scheme for regularisation of casual labourers who have worked for more than one year and who were engaged prior to 30.3.85, having gained temporary status. The applicants have contended that, the cut-off date of 30.3.85 is arbitrary and illegal.

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3. The respondents have raised preliminary objections relating to the failure to file an application with the Assistant Labour Commissioner and that this Tribunal has no jurisdiction as the case is governed by the Industrial Disputes Act, 1947. In our opinion, this contention is devoid of any merit. The applicants have not claimed any relief under the Industrial Disputes Act, 1947. Apart from this, a Full Bench of this Tribunal had held in A. Padmavalley Vs. C.P.W.D. 1990(3) SLJ (CAT), that it is open to the employee to plead violation of Article 14 of the Constitution and thereby seek redress without approaching the Industrial Tribunal for adjudication of rights vested under the provisions of Industrial Disputes Act. In the instant case, the applicant has alleged violation of Articles 14 and 16 of the Constitution.

4. The respondents have contended that the applicant were engaged on purely casual basis and that they were given work as and when required. Their services were terminated on the principle of 'Last come first go' and they were given one month's notice. The orders regarding giving temporary status w.e.f. 1.10.89 were not applicable in their cases as they had been retrenched before that date. The applicants had known that they were engaged for temporary work and were liable to be retrenched as soon as the work was over.

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5. We have gone through the records of the case and have heard the learned counsel for both parties. The following issues have already been settled in the cases already decided by the Supreme Court and this Tribunal.

(i) This Tribunal has jurisdiction to entertain the cases of Casual labour/daily wage under Section 19 of the Administrative Tribunal Act, 1985 (Judgement of the Full Bench of the Tribunal- Rahamathullah Khan Vs. U.O.I. & Ors., 1989(2) SLJ 293, CAT).

(ii) The State cannot deny to the Casual Labourers at least the minimum pay scales of regularly employed workmen, even though the Government may not be compelled to extend all the benefits enjoyed by the regularly recruited employees. A scheme was prepared by the Post and Telegraph Department on the directions of the Supreme Court for absorbing the Casual Labourers ^{known} as 'Casual Labourers (grant of temporary status for regularisation)'. (Bhartiya Dak Tar Mazdoor Manch Vs. U.O.I. & Ors., AIR 1987 SC.2342)

6. The cut-off date of 30.3.85 is not based on any rational basis and is not legally tenable (OA.529/88, decided on 4.5.88)

7. In the light of the above, another Bench of this Tribunal, of which one of us (Shri P.K. Kartha) was

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a party, gave a decision on a batch of ten applications on 18.5.90 (Hari Shankar Swamy and Others Vs. U.O.I. and Others) holding that the action of the respondents to give the benefit of regularisation scheme only to those employees who were engaged before 1.4.85 was not legally sustainable.

8. The respondents have themselves admitted that the applicants have worked for more than one year. Following the ratio of above mentioned Judgements, we hold that the applicants are entitled to succeed. The application is, therefore, disposed of with the following orders and directions:

- (i) We set aside and quash the notice dated 25.7.89, terminating the services of the applicant No.1 from 25.8.89 and notice dated 29.9.88, terminating the services of the applicant No.2 from 1.11.88.
- (ii) After reinstating them, the respondents shall consider regularising their services in accordance with the scheme prepared by them. Till such regularisation, they shall be paid minimum pay in the pay scale of regularly employed workmen and shall be entitled to the benefits and privileges envisaged in the Judgement of the Supreme Court in Jagrit Mazdoor Union's case (1989(2) SCALE 1955).
- (iii) In the facts and circumstances of the case, we do not direct payment of any back wages to the applicants.
- (iv) There will be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL) 31/1/92
MEMBER(A)

P.K. Kartha
31/1/92
(P.K. KARTHA)
VICE CHAIRMAN(J)