

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA 2018/90

New Delhi, dated the 23th Feb., 1994

Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)
Hon'ble Mr. B.S. Hegde, Member(Judicial)

Shri Ajit Sharma
Son of Shri S.R. Sharma,
F-1421, Laxmi Bai Nagar,
New Delhi.

..... Applicant

(By Advocate Sh.M.P.Raju, proxy counsel
for Sh.J.P.Verghese)

Versus

Union of India,
through the Under Secretary,
Department of Education,
Ministry of Human Resources & Development,
Shastri Bhawan, New Delhi

.... Respondent

(By Advocate Sh. M.L.Verma)

ORDER(ORAL)

(Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)

The applicant states that he was appointed as Messenger/Assistant worker in the Department of Education and was working as such continuously from 15.9.87 to 22.1.90 on a salary of Rs 1035/-. He states that his service was unauthorisedly terminated thereafter without any enquiry or notice. He also alleges that he has not been paid any salary for the period from 1.1.90 to 22.1.90. It is stated that 'Demand notice' was sent

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on 8.2.90 demanding his re-instatement to which no reply has been received. He has, therefore, filed this O.A. for a declaration that the termination of his service is illegal and a direction for his re-instatement with full back wages and for the wages for 22 days which has been withheld.

2. Respondents have filed a reply denying the allegations made. It is stated that the applicant was a casual daily wager (workman) by the Department of Education, during the following periods.

13.9.87 to 19.12.1987
20.4.1988 to 13.3.1989
6.4.89 to 2.8.1989
4.9.89 to 31.12.1989

It is their contention that his service was discontinued on 31.12.1989 as there were no work available for him. However, in para 1 of the reply regarding preliminary objection, it is stated that the applicant was never engaged after 23.1.90 as his work was no more required by the respondents.

3. It is further contended that he was a casual worker. He was paid minimum wages notified by the Ministry of Labour under the Minimum Wages Act, 1945. Respondents state

that recruitment of daily wagers is done only for work which is of a casual or a seasonal or intermittent nature. His service were terminated depending on the requirements of work.

4. Demand notice was not received by the department and hence no reply was sent.

5. The applicant has filed rejoinder reiterating the stand taken by him in the O.A. He relies on a judgment of the Allahabad High Court for his contention that he is entitled to be regularised in consideration of his past services.

6. We have heard the learned counsel for both the parties. Learned counsel for the applicant has drawn our attention to the judgment of Allahabad High Court III(1990) CSJ (HC) (1) copy enclosed as Ann.A to the rejoinder). It was held that "paucity of funds or absence of sanctioned post cannot be a ground for denying the benefit of regularisation to the petitioner who had worked for about 10 years."

7. Learned counsel for the applicant also submitted that even, if the reply of the respondents that the applicant worked in discontinuous spells is admitted for the sake

of arguments, it may be noted that he had worked for 240-days in each of the two consecutive years. Therefore, under the standing instruction of Govt., he was entitled to be regularised.

8. Learned counsel for the respondents submitted that the applicant had not worked upto 23.1.90 as mentioned in para 1/wherein it is stated that he was never engaged after 23.1.90. He submits that it should be construed to refer to 31.12.1991 only as referred to in the other paras of the reply.

9. We have carefully, considered the rival contentions. When the respondents, made an averment that the applicant had worked in 4 discontinuous spells, the applicant did not challenge this seriously in the rejoinder, excepting to state that the breaks are artificial breaks. If the applicant had really worked continuously from 15.9.87 to 22.1.90, as alleged in the O.A., he could have prayed for a direction to the respondents to produce original acquittance rolls of that period to show whether the applicant had been paid or not during that entire period. Not having done that, we are satisfied

that the respondents have established that the applicant was not engaged continuously but only in broken periods.

10. The reliance on the Allahabad High Court's judgment referred to above for two reasons is not proper. Firstly, the service is not continuous secondly, the service is not long enough for consideration for regularisation.

11. In so far as the claim that the applicant had worked for 240-days in two consecutive years is concerned, we notice from the statement given by the respondents that the applicant had worked for the whole of the year 1989 except for the period between
14.3.89 to 5.4.89 (23-days) & 3.8.89 to 3.9.89 i.e. 32 days.

This will be more than 240 days. In the previous calendar year, of 1988 he had worked from 20.4.88 to 31.12.1988 without break. This also is for more than 240-days. However, that is not an issue ^{which} ~~what is~~ raised in the O.A.

12. If applicant wants to be considered on the basis of the standing instructions of the Department of personnel in this behalf, it is open to him to make a separate representation in this behalf to the respondents.

13. In so far as main prayer in this O.A. is concerned, we are of the view that the applicant is not entitled to

regularisation. However, we are satisfied that the applicant had worked up to 22.1.90 for which period he has not been paid.

14. We, therefore, dispose of this O.A. with a direction to the respondents to make payment to the applicant for the period 1.1.90 to 22.1.90 within two months from the date of receipt of this order. We also make it clear that this order will not stand in the way of the applicant from making any representation to the respondents for regularisation on the basis of standing instructions, if any, of the Ministry of Personnel that casual labourers who have worked in two consecutive years for 240 days in each year, may be considered for regularisation.

This O.A. is disposed of with the above direction.

B.S. Hegde
(B.S. Hegde)

Member (J)

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N.V. Krishnan
23-2-84
(N.V. Krishnan)

Vice Chairman (A)