

Regn. No. (1) OA 2078/90
(2) OA 2366/90

Date of decision: 26.02.92.

(1) OA 2078/90

Shri Raj Kumar

...Applicant

Vs.

U.O.I. & Another

...Respondents

(2) OA 2366/90

Shri Anand Prakash

...Applicant

Vs.

U.O.I. & Others

...Respondents

For the Applicant in (1) and (2) above ...Shri K.L. Bhatia, Counsel

For the Respondents in (1) and (2) above ...Shri P.P. Khurana, Counsel

CORAM:

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

THE HON'BLE MR. B.N. DHUNDIYAL, 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? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

As the issues raised in these two applications are identical, it is proposed to deal with them in a common judgment.

2. The applicants have worked as daily rated Badli workers in the Delhi Milk Scheme (DMS) and they are seeking the extension to them of the benefit of the judgment.

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of this Tribunal in OA 1059/87 dated 21.10.1987

(D.M.S. Employees Union Vs. Union of India, 1988(2)

SLJ (CAT) 109).

3. The applicant in OA 2078/90 has stated that he has worked as Daily Paid Maté (casual worker) from 1982 to 26.7.1990. The applicant in OA 2366/90 has stated that he has similarly worked from March, 1987 to 26.7.1990. They claim that their service is governed by the terms and conditions of employment and hours of work etc. specified in the Certified Standing Orders for employees of the Delhi Milk Scheme as certified under the Industrial Employment (Standing Orders) Act, 1946 by the Certifying Officer and Dy. Chief Labour Commissioner (Central) New Delhi vide his Endt. No.1(9)/49/60-VS dated 15.6.1962.

4. Under para 4(1) of the said Standing Orders the Mates are classified as :-

"(a) (i) Casual;

(ii) Badli; and

(iii) Apprentices

(b) A casual worker means a worker who is employed on work of a casual or occasional nature to fill posts in regular work, provided that a casual worker after continuously working for three months in regular work shall be transferred to regular establishment governed by Fundamental and Supplementary Rules.

(c) 'Badli Worker means a worker who is employed for the purpose of working in place of regular employees who are temporarily absent.

Provided that a Badli worker who has actually worked for not less than 240 days in any period of 12 months shall be transferred to regular establishment governed by the Fundamental and Supplementary Rules."

5. In D.M.S. Employees Union Vs. Union of India, 1988(2)

SLJ(CAT) 109, similarly situated employees challenged their non regularisation before this Tribunal. By judgment dated 21.10.1987, it was held as follows:-

"(a) The respondents should accord to the Daily Rates Mates (Badli Workers) who are concededly performing the same duties as regular Class IV Mates, the same salary and conditions of service other than regular appointment as are being received by the regular Class IV Mates from the date of their appointment as Badli Workers.

(b) These Daily Rates Mates who have actually worked for not less than 240 days in any period of 12 months should be transferred to the regular establishment with effect from the first day of the month immediately following the 12th month of the said period. The gap, if any, in their employment subsequent to the date of such regularisation should be treated as leave with or without pay as due, or 'dies non' as the case may be. Supernumerary posts in the regular establishment may be created if necessary for this purpose.

(c) The respondents should issue necessary orders and make good the payments of arrears of salary etc. within a period of four months from the date of communication of this order."

6. The applicants have alleged that the respondents have regularised the services of several employees, including some of their juniors, in implementation of the aforesaid judgment but their services were not so regularised.

7. The basis contention of the respondents is that the applicants have not worked for 240 days in any period of 12 months from the date of their appointment till their disengagement. They have not controverted the contention of the applicants that persons junior to them have been regularised by them.

8. We have gone through the records of the case carefully and have considered the rival contentions. The question whether sundays and holidays should also be included for the purpose of computing 240 days in a year was considered by this Tribunal in OA 37/88 (Pramod Kumar & Others Vs. Union of India & Others) decided on 10.08.1989. It was held that sundays and holidays should also be included for the purpose of computing the period of 240 days in a year. In this context, reliance was placed on the judgment of the Supreme Court in H.D. Singh Vs. Reserve Bank of India, 1985 SCC(I&S) 975.

9. Pramod Kumar's case also related to the regularisation of Badli Workers in the D.M.S.

10. In the conspectus of the facts and circumstances of the case and following the judgments of this Tribunal in D.M.S. Employees Union's case and Pramod Kumar's case, these applications are disposed of with the following orders and directions:-

(1) We hold that the termination of the services of the applicants is not legally tenable and the same is set aside and quashed.

(2) The applicants shall be deemed to be transferred to the regular establishment after having worked for not less than 240 days in any period of 12 months. For

the purpose of computing the period of 240 days in a year, sundays and other paid holidays should also be included.

(3) In the facts and circumstances, we do not direct payment of back wages to the applicants. However, the intervening period should be treated as leave with or without pay as due or dies non, as the case may be.

(4) The respondents shall comply with the above directions, preferably within three months from the date of receipt of this order.

There will be no order as to costs.

Let a copy of this order be placed in both the case files. The interim orders passed on 12.10.90 in OA 2078/90 and on 20.11.90 in OA 366/90 are hereby made absolute.

(B.N. DHOUNDIYAL)
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN (J)

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