

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 2105/91

Date of decision: 28.02.1992

Shri Uttam Kumar Yadav

...Applicant

Vs.

Director General, Indian
Council of Agricultural
Research (ICAR) & Another

...Respondents

For the Applicant

...Shri K.L. Bhatia,
Counsel

For the Respondents

...Shri Manoj Chatterji,
Counsel

CORAM:

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

THE HON'BLE MR. D.K. CHAKRAVORTY, 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 Shri P. K. Kartha, Vice Chairman(J))

The applicant who has worked as a daily paid worker in the Indian Agricultural Research Institute under the ICAR is aggrieved by the termination of his services and is seeking re-engagement as well as regularisation in a Group 'D' post with all consequential benefits.

2. We have heard the learned counsel of both parties and have gone through the records of the case carefully. The version of the applicant is that he has worked from 1983 to 1987 for about 5 years and in this context he has produced

[Signature]

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certificates issued by the officers of the ^a IARI at pages 11 to 16 of the paperbook. The version of the respondents is that even if the period mentioned in these certificates is totalled ^a ~~but~~, it will be less than 240 days. The applicant states that in addition to the actual days mentioned in these certificates if sundays and holidays are also added, it will be more than 240 days. The applicant has mentioned in Annexure -I to the application, page 10 of the paperbook, a list of persons who have been employed after disengaging his services. The Annexure-I refers to the list of persons working in the All India Radio, Todapur and not in the IARI. The learned counsel for the applicant, however, stated that the IARI also is located near All India Radio near Todapur and that the reference of persons in the said list is to the persons engaged in the IARI.

3. The respondents have contended that the applicant has no legal right to continued engagement as daily paid worker and that ^a ~~the engagement of~~ ^e such workers would be engaged as and when need arises. The respondents have not kept any record of the engagement of such persons. They are only maintaining a record of persons who have been engaged for 240 days or more. The respondents have raised a preliminary objection that the application is barred by limitation as the applicant was disengaged in 1987 while the application has been filed in 1991 after a lapse of nearly 3 years and 9 months.

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4. In our opinion, the plea of limitation raised by the respondents is not tenable as the applicant had, after his disengagement continued to represent to the authorities concerned for taking him back to duty.

5. On the merits, the only right of a daily paid worker ^{has} is that he will have preference over the others with lesser length of service. This is so by virtue of provisions of Articles 14 and 16 of the Constitution. The applicant has alleged in the application that after disengaging him, the respondents have retained the services of the persons ^{junior to him} and have also recruited fresh persons as daily paid workers. The respondents have stated that the engagement of a daily paid worker is strictly ^{made} from amongst the names received from the Employment Exchange. Whenever a need arises the Employment Exchange is approached for suitable names and after the work is over the persons so engaged are disengaged. According to them, the question of somebody being senior or junior does not arise as they do not maintain any record of persons who have not worked for 240 days or more. In our opinion, the practice followed by the respondents is not legally tenable. Even daily paid labourers are entitled to the protection of Articles 14 and 16 of the Constitution, which postulate fairness in administrative action. The respondents cannot approach the


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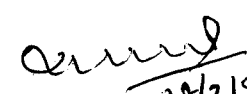
Employment Exchange everytime they need the services of a daily paid worker when daily paid workers who had been engaged earlier are available. The learned counsel for the respondents fairly stated that the respondents have no complaint against the applicant as regards his performance and conduct.

6. In the facts and circumstances of the case, we dispose of the present application with the direction to the respondents to consider engaging the applicant as daily paid worker so long as they need the services of such a worker and in preference to persons with lesser length of service and outsiders. We further direct that the applicant shall be reengaged whenever need arises without insisting on his name being sponsored by the Employment Exchange every time. The respondents are also restrained from retaining the services of any person as daily paid worker with lesser length of service overlooking the preferential claims of the applicant. They shall also not induct fresh recruits overlooking his claim. The application is disposed of on the above lines.

7. The interim order passed on 13.9.1990 is hereby made absolute.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)


28/2/92
(P.K. KARTHA)
VICE CHAIRMAN (J)