

(3A) ~~24~~

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

Dated: ^{MARCH} ~~February~~ 24th, 1995.

1) O.A.No.2240/91

1. Shri R.P.Pal,
s/o Shri Raja Ram Pal.
2. Shri Ram Janam,
s/o Shri Purshotam Ram.
3. Smt.Sudesh Sharma,
w/o Shri Mohan Singh.
4. Shri Mahender Singh,
s/o Shri Umrao Singh,
5. Shri Man Mohan Singh Rawat,
s/o Jaikrit Singh.
6. Shri Bharat Singh
s/o Shri Babu Lal.
7. Smt. Urmila Verma,
w/o Shri Yeshpal Verma,

All Daily Wage Labourers,
Ministry of Environment & Forest,
Pariavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-3

.....Applicants.

Versus

1. The Union of India through the
Secretary to the Government,
Ministry of Environment & Forest,
Pariavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi -3.
2. The Deputy Secretary (Admn.)
Ministry of Environment & Forest,
Pariavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi -3

.....Respondents.

2) O.A.No.2487/91

1. Babhuti Singh s/o Shri Karan Singh.
2. Arjun Kumar s/o Shri Munshi Sah.
3. Hari Singh Rawat, s/o Shri Amar Singh Rawat.
4. Shreepal s/o Shri Mohinder Singh.
5. Manoj Kumar s/o Shri Karan Bir Singh.
6. Sanjay s/o Shri Sukhbir Singh.
7. Hira Lal s/o Shri Bhangarasan Sah

All Daily Rated Worker ,
Ministry of Environment & Forest,
CGO Complex, New Delhi.

.....Applicants.

35

Versus

1. Union of India through the Secretary, Ministry of Environment & Forest, Pariyavaran Bhawan, CGO Complex, New Delhi.
 2. The Deputy Secretary, Ministry of Environment & Forest, Pariyavaran Bhawan, CGO Complex, New Delhi Respondents.
- Advocate Shri B.B.Raval for the applicants.
Advocate Shri P.H.Ram Chandani for the respondents.

HON'BLE MR.S.R.ADIGE , MEMBER (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN , MEMBER (J)

JUDGMENT

By Hon'ble Mr.S.R.Adige, Member (A)

As in O.A.No.2240 /91 ' R.P.Pal & others Vs. Union of India and O.A. No.2487/91 'Bhabhuti Singh & others Vs. Union of India' similar questions of fact and law have arisen, both the O.As are being taken together with their connected M.As and are being disposed of by this common judgment.

2. O.A.No.2240/91 had been filed on 26.9.91 by Shri R.P.Pal & 6 others, all Daily Wage Labourers in the Ministry of Environment & Forest, Pariyavarn Bhawan, New Delhi praying for quashing the respondents' decision to disengage/terminate their services as Casual Labourers; for continuance in their service and for consideration of their case for regular employment on the basis of past work and experience. Similarly O.A.No.2487/91 was filed on 24.10.91 by Shri Bhabhuti Singh and 6 others, all Daily Rated Workers in the Ministry of Environment & Forest , Pariyavaran Bhawan, praying for a direction to the respondents not to disengage them; and for their continuance as well as for their regularisation in preference to juniors and outsiders

(m)

28
36

and those not coming through the Employment Exchange.

3. In both the O.As, interim reliefs were prayed for to restrain the respondents from terminating the applicants' services.

4. O.A.No.2240/91 came up for hearing for the first time on 26.9.91, on which date notices were issued to the respondents on admission and interim relief returnable on 10.10.91, and in view of the averments of the applicants' counsel that there were enough vacancies to accommodate the applicants as Casual Labourer, the respondents ^{meanwhile} were directed not to terminate the applicants' services so long as the vacancies existed and to maintain the status quo as regards to the continuance of the applicants as Casual Labourers for a period of 14 days. This interim order was extended from time to time. Similarly, O.A.No.2487/91, which got clubbed with O.A.No.2240/91 (but thereafter got detached as would appear from the order-sheet dated 30.7.93 in O.A.No. 2487/91, till it was again reclubbed on ¹¹2.1.95), came up for hearing for the first time on 13.12.91, and from the order sheet of that date, it appears that the interim orders were issued and were extended from time to time.

5. Shortly stated the applicants' case in O.A.No.2240/91 is that they were appointed as Casual Labourers on Daily Wages in respondent No.1's office (Ministry of Environment & Forest, Pariyavaran Bhawan) after due sponsorship by the Employment Exchange, Kamla Market, New Delhi w.e.f. 11.4.91 but the respondents had decided to terminate their services w.e.f. 27.9.91. Similarly in O.A. No.2487/91,

h

37

the applicants claim that they were appointed as Casual Labourers after due sponsorship by the Zonal Employment Exchange and worked as Daily Rate Muster Roll Worker w.e.f. 11.4.91 to 14.10.91. Some of them have also claimed that they have also worked in the previous year on identical terms from 30.4.90 to 30.9.90. They claim that during these periods of service, they discharged various duties usually performed by Class IV employees including those of Waterman, Peons, cleaning rooms and furnitures etc. They state that normally they had been working ^{for} ~~as~~ six days a week as they were called to work on Saturdays to clean rooms, furnitures etc. and to do ^{various other} ~~other~~ ^{various} ~~various~~ ^{other} ~~Misc.~~ ^{various} work. They allege that they were employed as Daily Wage Casual Labourers although they were doing the work of regular employees and are working against regular vacancies. They further allege that the respondents were following a policy of hire and fire in respect of casual labourers by employing a group of casual labourers and then terminating their services and then hiring another group. They contend that there is ^{no} ~~not~~ reason whatsoever for discontinuing the work of the applicants as there are enough vacancies and sufficient work which require their services to be continued, but they allege that a decision ^{had} ~~has~~ been taken to disengage them with immediate effect to take in new casual labourers after a short break or immediately and this decision was likely to be implemented any day.

6. On 11.11.91, the applicants filed M.P. No.3521/91 alleging that, inspite of the interim orders passed on 26.9.91, the respondents had terminated the services of the applicants by way of verbal orders and prayed for a direction to the respondents to implement the said orders dated 26.9.91.

7. Meanwhile, the respondents filed their reply on 10.10.91, in which they ~~denied~~^{denied} the averments made in the O.A. They stated that the applicants in the O.A. were working as Casual Labourers in the Ministry of Environment w.e.f. 11.4.91, after calling for names from the Muster Roll Labour Office of the Employment Exchange. They pointed out that the Ministry's requisition specifically stated that the daily wagers were required for pouring water in desert coolers and other misc^{ellaneous} work (Annexure I to the counter). The respondents stated that they engage some daily wage labourers during the summer season every year for pouring water in desert coolers and after the close of summer season as there was no requirement of filling water, the services of daily wage labourers were terminated. The respondents denied that the applicants were discharging the work of regular and permanent nature and contended that the work for which these daily wagers were engaged was of a casual and seasonal nature and after the requirement of that work was over, there was no alternative, but to terminate their services. The fact that they were engaged as casual labourers, was evident from the averment that their names were secured from the Muster Roll Labour Office of the Employment Exchange Kamla Market, Delhi w.e.f. 11.4.91 (Annexure-I) and the ^{Employment} Exchange recommendations were also for Muster Roll Labour (Annexure II). It has been emphasised that the applicants were not appointed against ^{any of the} Ministry's vacancies because

29

otherwise their ^{names} would have been supplied by the Curzon Road Employment Exchange, after clearances from the Surplus/ Ex-Servicemen's Cell. The respondents stated that the applicants were thus engaged w.e.f. 11.4.91 for the work of pouring water in desert coolers and the need for their seasonal services being over, they ~~were~~ ^{hadn} ceased to work w.e.f. 30.9.91 but in deference to the Tribunal's orders dated 26.9.91, they had continued to work on daily wages basis. The respondents have denied that the applicants were doing the work of regular employees and against ~~the~~ regular vacancies and further pointed out that on the dates these casual workers were employed, the Ministry had only one vacancy in the grade of peon in April, 1991. The respondents have further given a Chart (Annexure-III) showing that in 1989, 19 daily wagers were appointed from the period 17.4.89 to 30.9.89 for pouring water in desert coolers. Similarly, in 1990, 20 daily wagers were appointed from 30.4.90 to 30.9.90 for this purpose. Therefore, they urged that the O.A. is fit to be dismissed.

8. The applicants in their rejoinder deny the averments made by the respondents and contended that there is still lot of work previously being done by regular peons and now being performed by the applicants. They reiterate their stand that the respondents had terminated the services of the casual labourers and thereafter engaged two fresh ^{persons} ~~hands~~; namely Sarv Shri Pal Singh and Punna Bahadur from the open market, violating the policy regarding engagement of the casual labourers contained in ^{in Dept. of Personnel} O.M. dated 7.6.88. They deny that they were engaged for performing the work of casual and seasonal nature, and claim that they were required to do all sorts ^{of} work throughout ~~the~~ year and still there were vacancies and work against which they could be

appointed . They state that they were not claiming regularisation at this stage against the regular vacancies under Group 'D' ^{but} ^{only} and were seeking protection that they should not be disengaged ^{and} ~~but~~ should be ^{continue to} allowed to work . The applicants further reasserted the averment that Shri Pal Singh and Punna Bahadur, ^{both} outsiders were allowed to continue to work as casual labourers, although those two persons were junior to them and also contended that there were as many as 17 vacancies of peons in the respondents' office, details of which had been given. They also stated that there was shortage of staff to perform the job of peons and aver that this fact has been admitted by the respondents in the 17th meeting of the office Council of the Ministry of Environment & Forest held on 4.3.91. They also deny that the applicants had been allowed to work as per directives of the Tribunal in O.A.No.2487/91, and alleged that despite the Tribunal's directives, the services of all the casual labourers had been terminated for which they have separately filed CCP.

9. Thereafter, the applicants filed CCP No.76/93 alleging that the respondents in their counter affidavit had falsely stated that there was no work for casual/daily paid labourers and that no daily wage was employed with them and, therefore, they were not in a position to employ the petitioners inspite of the Tribunal's directions to engage them on daily wage followed by regular work. In support of their contention that the averments made by the respondents were false, the applicants filed;

- i) Copy of Pass dated 6.8.92 in the name of Shri Shiva, who, the applicants allege, was a Casual Paid Worker on daily wages,

but was working at the residence of the former Secretary, Environment Ministry;

ii) a copy of Bill dated 3.8.92 for payment of salary for June and July, 1992 to S/Shri Ravindra Prasad, Jagbir Singh and Yogesh Bhargava;

iii) a copy of an order dated 30.7.92 sanctioning expenditure for wages for the above three persons for the month of June, 1992;

iv) Wage Bill order dated 30.7.92 mentioning the name of the daily wagers, number of days and the rates of payment along with a certificate that the above^{labourers} mentioned/ were employed by the Environment Ministry and the work could not be managed with permanent strength.

v) Sanction order dated 31.7.92 for payment of daily wages to the persons whose names are given therein, for July, 1992 supported by Wage Daily Order;

vi) a letter dated 12.5.92 from the Secretary, Central Government Class IV Employees Association requesting for the employment of the daily wagers for filling ^{the} water in ^{the} coolers during summer season;

vii) Environment Ministry's reply dated 29.5.92 stating that Chaprasis who were regular employees, were being employed for this purpose and no daily wage worker was employed;

viii) Environment Ministry's Circular dated 19.8.92 stating that due to change

A

in weather, the work of filling of water in the coolers was discontinued w.e.f.

1.9.92, and in case any officer desires to continue it beyond the said date, he may send the particulars in the enclosed proforma.

In the CCP, the applicants alleged that there had been contumacious violation of Tribunal's order dated 26.9.91 not to terminate the services of the applicants as long as the vacancies existed. They alleged that the above documents went to show that the persons junior to the applicants had been retained while the applicants had been disengaged; that private contractors were being employed for filling up the water in the desert coolers during summer season only to deny the applicants work and wages; in violation of the Labour Ministry notification dated 8.12.76 under section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970; the respondents had suggested that all those who had gone to the Tribunal should not be engaged year after, and that as many as 13 vacancies existed in the Environment Ministry and its attached Offices; namely Ganga Project Authority and the National Wasteland Development Board, but inspite of that the applicants were not engaged.

10. The respondents were called upon to file their reply to the CCP and upon the same being filed, it was heard in the presence of counsel for both the parties on 6.9.93, and disposed of by the judgment of even date. In the judgment, the Bench accepted the statement of the respondents that S/Shri Ravindra Prasad, Jagbir Singh and Yogesh Bhargava had been engaged in 1989 itself, i.e. much before

/

(42) 9/5

the date of interim orders i.e. 26.9.91 and were continued even in the year 1992 and thus it could not be said that those interim orders of the Tribunal had been violated. As regards Shri Shiva, the Bench held on the basis of materials before it that the respondents' stand^{was} corroborated that Shiva^{had} ~~not~~ come ⁱⁿ the scene not as a casual labourer but was engaged on contractual basis for purpose of maintaining potted plants for November, 1991 to October, 1992 and hence it could not be termed as a violation of the Tribunal's interim orders dated 26.9.91. Upon the applicants' contention that as the respondents resorted to get the work relating to desert and air coolers done on contractual basis instead of engagement of casual labourers like the petitioners, this was an attempt to circumvent the interim orders, which would invite contempt of court action, the Bench held that the interim orders did not restrain the respondents from getting the work done on contractual basis and further more the interim order dated 26.9.91 was itself modified by the Tribunal on 16.8.93 to the effect that the respondents would not be prevented from making an alternative arrangement for the maintenance of water coolers during summer season. In this connection, the Tribunal noticed the respondents' averment that they had decided to award a composite contract for the maintenance of water coolers, instead of engaging casual workers for this purpose, ^{as} a bonafide measure in the interest of economy and not to circumvent the Tribunal's interim orders and thus^{had} effected a saving of Rs.36000/- (Rs. ⁴⁰90000/- for casual labourers as against Rs.54,000/- on contractual basis). The Bench held that it was not

h

possible to take a view that action under the Contempt of Court Act was called for on the ground that the respondents were guilty of contumacious violation of the Tribunal's interim orders and accordingly dropped the proceedings, observing inter alia[^], that as and when the question of engaging the services of casual labourers arose, the spirit of the order should be borne in mind and an attempt be made to accommodate the applicants.

11. On 7.6.94, the applicants filed M.A.No.1696/94 vide Filing No.5258, praying that the criminal proceedings be initiated against Shri R.Rajamani, Secretary, Ministry of Environment & Forest, New Delhi for making a false submission on oath in his counter affidavit in CCP No.76/93, in which it had been stated that the three daily wagers S/Shri Ravinder Prasad, Jagbir Singh and Yogesh Bhargava were hired in 1989 for the Modern Forest Fire and Control Project in the Forest Ministry funded by the United Nations Development Programme. The applicants stated that a communication dated 4.2.94 (Annexure -M.A.2) had now come into possession which showed that one of the above three persons; namely Shri Yogesh Bhargava was employed not from 1989, but from 1.12.91 i.e. after the interim orders. Furthermore, the applicants contended that the contents of this communication dated 4.2.94 contradicted the stand taken in ^{Shri} Rajamani's counter affidavit and proved that S/Shri Ravinder Prasad and Yogesh Bhargava were not engaged for any technical duties as had been contended in that counter affidavit, but were doing only casual labourers' duties of loading, unloading etc. and furthermore, it was ~~further~~ contended that neither of them had come

through the Employment Exchange, Kamla Market. It was further alleged that there ^{were} ~~was~~ a number of other daily paid casual labourers also who had been engaged although they had not been sponsored by the Employment Exchange, Kamla Market and a further allegation was made ^{that} with a view to deny the applicants ^{appointment} as casual labourers, the respondents were ~~not~~ ^{not} deliberately promoting the eligible and available group 'D' ^{to} to group 'C' posts. It was also alleged that the respondents were going to fill up 12 posts of group 'D' by regular appointment from the open market, but the respondents were intentionally trying to keep the applicants out of job, notwithstanding the stay orders they had in their favour.

12. In their reply to this M.A., the respondents stated that ^{only} one of the two daily wagers; namely Shri Yogesh Bhargava was engaged w.e.f. 1.12.91 but as a matter of fact ^{even} ~~he~~ he was working in the Air Operations Wing (AOW) from May, 1988 onwards as an unpaid Apprentice in the Modern Forest Fire Control Project, and on the basis of a certificate issued by the Quality Control Manager of the Wing, he had appeared in the examination of the Aircraft Maintenance Engineering conducted by the Directorate General of Civil Aviation. In this connection, they enclosed a note recorded by Shri C.M. Bakshi, Section officer of AOW dated 23.9.94 (the functionary who had recorded the note dated 4.2.94), relied upon by the applicant). In this note dated 23.9.94, Shri Bakshi clarified that Shri Yogesh Bhargava was appointed as a daily wages worker in the AOW ~~only~~ w.e.f. 1.12.91 but from May, 1988 he had been working as AME Apprentice (Non-paid) in AOW. In their reply, the respondents further stated that it was because of this experience that Shri Yogesh Bhargava was appointed in AOW w.e.f. 1.12.91 and the statement made

by Shri R.Rajamani(who incidently had retired on 31.8.94) in his affidavit dated 16.4.93 that Shri Yogesh Bhargava was hired from 1989 , was identical to^a similar statement made by Shri M.G.Grover, Deputy Secretary in his affidavit of the same date. Shri R.Rajamani had been led to believe, ^{a about Shri Yogesh Bhargava} ~~it appears, the~~ ^{being hired} ~~fact~~ on the basis of report made to him by Shri M.G. Grover, and ^{they} further stated that the documentary evidence on the basis of which Shri Grover led him to believe the said ^{a position} ~~fact~~ was not presently available in the Ministry. The respondents admitted that the statement that Shri Yogesh Bhargava had been hired from 1989, had been made erroneously, ^{and in a} ~~with~~ loose sense and consequently an error had crept into Shri R.Rajamani's affidavit which was regretted. However, as Shri Yogesh Bhargava had been working in the department since 1988 onwards, he was engaged as a casual labourer in the AOW which required technical experience. The respondents stated that the AOW functioned as a separate Unit although it was under overall charge and control of the Ministry.

14. The applicants filed rejoinder on 31.10.94 in which they reiterated the contents of M.A. No.1696/94. In the rejoinder, it was pointed out that the respondents ^a ~~had~~ not been able to deny that Shri R.Rajamai's counter affidavit in CCP No.76/94 contained ^a ~~a~~ false averment. Furthermore, it was stated that Shri K.Sethuraman, Deputy Secretary , Ministry of Environment and Forests in O.M. dated 9.6.94 (Annexure M.A.4), addressed to the Director, Department of Personnel & Training, had submitted a proposal for regularising the casual labourers engaged by the Ministry as per DOPT's O.M. dated 7.6.88,

A

in which last four lines read as follows:-

"However, two casual labourers were engaged by the Air Operation Wing of this Ministry w.e.f. 23.10.89 and 1.12.91, and both these casual labourers still continues to be so engaged. DOPT are requested to clarify whether these two casual labourers can be granted temporary status in terms of in 1993."

It was stated that out of these two casual labourers, one engaged on 1.12.91, was none else than Shri Yogesh Bhargava who was falsely mentioned in the counter reply to the Contempt of Court Petition as a Technical hand. It was also stated that neither of these employees had come through Employment Exchange, Kamla Market. An Office Order dated 6.10.94 was appended giving the list of 12 Daily paid Group 'D' temporary employees and allotting them duties on Sundays and holidays. A copy of an application submitted by three daily paid casual labourers was also filed praying for regularisation under the Directorate of Ganga Project of the Environment Ministry, in which it was stated that it was reliably learnt that 12 vacancies in the posts of Mali/Gardners were lying vacant. A copy of the letter dated 4.10.94 of the Environment Ministry addressed to the Pay and Accounts Officer of that Ministry on the subject of payment of wages to Daily Rated Staff, was also filed along with the acquittance roll of one Shri Shyam Lal Verma for the month of September, 1994, together with a copy of Office order dated 21.7.94 ^{calling upon} six group 'D', daily paid, temporary employees to present themselves on 21.7.94 along with necessary certificates.

none of whom, it is alleged, has been sponsored through the Employment Exchange. Accordingly, it was prayed that all the reliefs sought for in that M.A. be allowed, with a further prayer to initiate criminal action against the respondents for making false submissions/ statements.

15. Yet another M.A. No.3881/94 was filed in O.A.No.2240/91, alleging that although the respondents in their reply to CCP No.76/93 had averred that no daily wager was hired to discharge any work of regular or permanent nature, which according to the applicant meant that as on 16.4.93, the respondents claim that they did not have any casual worker/daily paid casual labourer under them, the ^{Applicants} ~~respondents~~ had come across an order dated 4.11.94 issued by the Section Officer, Environment Ministry approving the regularisation and appointment as Pe ons of four daily rated workers (Annexure-M.A 1), none of whom had come through Kamla Market Employment Exchange. Accordingly it was prayed that the impugned order dated 4.11.94 (Annexure-MA 1) be quashed as contrary to the respondents' own submission and their stand in the reply to the contempt petition.

16. In their reply the respondents have contended that while the applicants were employed as Casual Labourers in the Ministry(Proper), the persons mentioned in the impugned letter dated 4.11.94 were engaged as Daily rated workers in Ganga Project Directorate (G/P).

^{Der. Board}
National Afforestation & Eco ^(NAEB) which were Units distinct and separate from the Ministry (Proper) with their own identity and hence the cases of the applicants

could not be compared with the persons engaged in other administrative Units under the Ministry. It was also stated that the said four persons were not respondents in the present O.A. and for that reason, no challenge could be raised to their appointments.

17. In their rejoinder, the applicants apart from raising the preliminary objection that ^{the} reply had neither been signed nor verified nor dated and, therefore ^{was it} fit to be struck off the record, as per C.A.T. (Procedure) Rules, as well as the ruling in Ram Rakha Vs. Union of India & others -AIR 1988 (2) All. 365, reiterated that Shri R. Rajamani, the then Secretary had filed a false affidavit and in this connection referred to a news item appearing in November 16, 1994 Daily Edition of the Hindustan Times, wherein the Hon'ble Supreme Court had taken a very serious view of false submission, which had been made before the Hon'ble Court and sentenced the person concerned to two weeks imprisonment. It had been urged that in the present case, the principle of stare decisis applies and severe punishment should be meted out to those who had filed false document. The respondents' statement that NAEB and GPD ^{was} ~~not~~ not the same Unit as the Ministry (Proper), ^{was} ~~not~~ ~~challenged~~ challenged and it ^{has} ~~been~~ contended that all the departments/directorates are part and parcel of the Environment Ministry under ^{their} direct control and in this connection, a copy of letter dated 21.1.94 on the subject of seniority list in the Ministry as on said date of permanent and temporary group 'D' employee, ^{was} ~~was~~ filed (Annexure - MA 3) to emphasise that there ^{was} a common cadre of group 'D' posts, controlled centrally by the Ministry

50

itself. It ~~was~~ also ~~been~~ contended that the respondents in their reply to M.A. 92 in O.A.No.1329/92 Smt.Kamla Devi Vs. UOI & others have admitted that the GPD was made operative as a Wing of the Environment Ministry. It ~~was~~ stated that the GPD ~~was~~ not an autonomous body but ~~was~~ financially and administratively dependent on the Environment Ministry. It ~~was~~, therefore, contended that the averments of the respondents that in the case of ~~any~~ NAEB and GPD, the appointments had been made by the different Units having their own officers declared as Heads of Department for which reason the cases of the applicants could not be compared, ~~was~~ incorrect and false. It ~~was~~ further stated that the persons/officials appointed under the Ganga Project Directorate, NAEB and Ministry ~~are~~ ^{were} interchangeable and ~~were~~ transferable. It ~~was~~ contended that the applicants ~~were~~ challenging allegedly the illegal act of the respondents in appointing the four persons named in the order dated 4.11.94 on daily wage/adhoc basis and thereafter taking steps to regularise them and hence there was no necessity to implead them, but if required this could be done. It ~~was~~ stated that these four persons had not come through Employment Exchange. Further more, a copy of the respondents' reply in O.A.No.1329/92 Smt. Kamla Devi and others Vs. Union of India and others, ~~has~~ also ~~been~~ filed, in which it ~~has been~~ stated that the Ganga Project Directorate was made operative as a wing of the Environment Ministry and the said Ganga Project Directorate ~~was~~ ^{is} not an autonomous body but ~~was~~ financially and administratively dependent upon the Environment Ministry. Extracts from the annual report ~~has~~ also ~~been~~ filed, in which the staff strength of NAEB and GPD ~~are~~ ^{is} included within

the main Ministry.

18. In O.A.No.2487/91, the case of the applicant Bhabhuti Singh and others is that on the basis of temporary identity cards issued by the Zonal Employment Exchange (Muster Roll), Kamla Market, they were employed as Daily Rated Workers in the Environment Ministry on 11.4.91 and continued to work till 14.10.91 without break. Some of the applicants contend that they were similarly engaged as Muster Roll Workers in the Environment Ministry for a similar period in 1990 also. Their grievance ^{was} that they were suddenly disengaged without any reason, upon verbal instructions issued by the respondents. They allege that outsiders Sarv/S. Shiva Pan Singh and Punna Bahadur have been engaged over the claim of the applicants without reference to Zonal Employment Exchange and a person junior to them namely Smt. Sudesh ^{had} also been retained by the respondents as Daily Rated Casual Worker, although the applicants themselves ^{had} been disengaged. They contend that they had put in 120 days service as Muster Roll Workers and should not arbitrarily be disengaged.

19. The respondents' reply is much the same as that in O.A.No.2240/91 namely that the applicants were engaged as Casual Labourers in the Environment Ministry w.e.f. 11.4.91 after calling ^{for} the names from the Muster Roll Labour Office of the Employment Exchange specifically for pouring water in the desert coolers during the summer season. As the work for these Daily Workers was of casual and seasonal nature, there was no alternative but to

disengage them after the summer season was over. They had not been appointed against any vacancy, and it was not open to the applicants to secure a contract employment on the basis of one offer and then try to convert it into regular service for which no vacancies were in hand, nor ^{in sent} intimation ~~to~~ to the regular Employment Exchange. They have stated that Sarv Shri Shiva, Pan Singh and Punna Bahadur were engaged for other Misc^{elaneous} work and were disengaged w.e.f. 18.10.91 when they were no longer required. It has been stated that no casual labourer was employed after 11.4.91 (the date the applicants were engaged). As ^{regards} Smt. Sudesh, who was also engaged on 11.4.91 along with the applicants, ^{she} ~~he~~ was continuing on casual roll of the Environment Ministry pursuant to the Tribunal's orders dated 26.9.91 and 10.10.91 in O.A.No.2240/91 and M.P.No.3071/91. It is stated that none of the applicants had put in 206 days service in each of the two consecutive calendar years and, therefore, they could not be considered for regularisation. It is also stated that there was only one vacancy in the grade of Peon in the Environment Ministry, and the applicants had not been engaged against regular vacancies for the work of regular nature. It is also stated that the service of some Casual Labourers are being continued as directed by the Tribunal in O.A. No.2487/91.

20. In their rejoinder, the applicants have contended that as many as 17 vacancies of Peons are lying with the respondents against which the applicants had been engaged and were performing all sorts of work/duties which would have normally been performed by the 17 peons who have since been promoted to Clerks on adhoc basis. It is contended that they were required

to do all sort of casual, seasonal and other works of more than one type throughout the year. They contend that they are not claiming regularisation against regular Group 'D' vacancies but are seeking protection that they should not be disengaged arbitrarily. They claim that applicants No. 3, 4 and 6 had worked for 335 days each as casual labourers for two consecutive calendar years whereas applicants No. 1, 2, 5 and 7 had put in 182 days as casual labourers and according to the Govt. O.M. dated 7.6.88, their services are required to be reviewed for regularisation since they have completed 180 days for this purpose. It is reiterated that there are 17 vacancies in the grade of Peons and particulars of these 17 vacancies have also been sought to be given.

21. We have heard Shri B.B. Raval for the applicants and Shri P.H. Ram Chandani for the respondents at considerable length and have perused the materials on record. We have given the matter our careful consideration.

22. The first question that needs to be answered is whether the applicants had a right to continue to be engaged beyond September/October, 1991.

23. We find considerable merit in the stand taken by the respondents ^{that is the} as in ^{so in the} previous year, in the year 1991 also, the respondents had engaged some Daily Wage Labourers during the summer season temporarily for the task of pouring water in the desert coolers, and the applicants were amongst the Daily Wage Labourers so engaged. After the close of the summer season, as there was no requirement of filling water, their services were terminated. The work they were discharging, was

5A 46

not of regular and permanent nature, but was casual and seasonal in character and after the requirement of that work was over, there was no alternative but to terminate their services. The fact that the applicants in both the O.As were engaged as Casual Labourers, was evident from the fact that their names were secured from the Muster Roll, Kamla Market Employment Exchange vide letter dated 8.4.91 and the recommendations of Kamla Market Employment Exchange were also for Muster Roll Labours vide reply dated 10.4.91. In the event the applicants had been appointed against regular vacancies, their names would have been supplied by the Curzon Road Employment Exchange after clearances from surplus/Ex-servicemen's Cell. Under the circumstances, in view of the fact that the applicants had been engaged for work that was casual and seasonal in character, namely that of filling water in the desert coolers during the summer season - merely because they may have been called upon to perform certain other Misc. task does not detract from their principal task; namely filling water in the desert coolers - and when the summer season was over, their services were no longer required, they cannot claim an enforceable right to continue to be engaged even beyond the date when their services were no longer required.

24. The applicants could claim a right to be continued ^{and} to be regularised ^{in subsequently} only if they could establish that they had put in 206 continuous days of service in two consecutive years but none of the applicants have produced any evidence to show that they have put in 206 days of continuous service in two consecutive years. In fact, from the materials furnished by the

respondents, it is clear that the number of days of continuous service put in^{even} by the applicants with the largest period of service ^{to his} at ~~their~~ credit falls ^{for} short of ^{the} 206 days of continuous service required, as per rules.

25. The next question that needs to be answered is whether the fact that an error had crept into the affidavit of Shri R. Rajamani, Secretary (Since retired Environment Ministry regarding the date of engagement of Shri Yogesh Bhargava improves the case of the applicants in any manner. In this connection, it must be remembered that in O.A.No.2240/91, an interim order had been granted by the Tribunal on 26.9.91 directing the respondents not to terminate the applicants' services so long as the vacancies existed and to maintain the status quo as regard to the continuance of the applicants as casual labourers for a period of 14 days. This interim order was extended from time to time. Thereafter, CCP No.76/93 was filed alleging that the services of the petitioners had been terminated while the others had been appointed quite contrary to the interim orders. The persons alleged to have been appointed, were four in number, namely Sarv/Shri Shiva, Ravinder Prasad, Jagbir Singh and Yogesh Bhargava. The contempt petition had been dropped by order dated 6.9.93. In that order, the respondents' statement was believed that Sarv/Shri Ravinder Prasad, Jagbir Singh and Yogesh Bhargava were engaged in 1989 itself and in connection with another type of skilled work, ^{and if} they were continued ^{in service} in 1992 after the interim orders had come to be passed, this did not amount to violation of the Tribunal's interim orders. Similarly in the case of Shri

56 7/8

Shiva, the Tribunal was inclined to accept the stand of the applicants that said Shiva had come in the scene not as a Casual Labourer but was engaged to work on contractual basis. The applicants' contention that giving of work to Shiva on contract basis would defeat and violate the interim orders of the Tribunal, and the subsequent action of the respondents to get the work relating to desert coolers on contract basis instead of engaging casual labourers such as the applicants, was done to circumvent the Tribunal's interim orders, was also rejected; firstly because the interim orders did not restrain the respondents from getting the work done on contractual basis and secondly because the interim orders dated 26.9.91 was itself modified by the Tribunal on 16.8.93, making it clear that the respondents would not be prevented from making an alternative arrangement for the maintenance of the desert coolers during the summer season.

26. Even if now it transpires that an error did creep into Shri R.Rajamani's affidavit in regard to the date of appointment of Shri Yogesh Bhargava, we are unable to see how it advances the applicants' claim not to be disengaged. As stated above, they were engaged for a specific task, which was to be performed during the summer season and when that task was over, all of them were disengaged. The cannot take advantage of any error that might have crept into a reply in a CCP to seek enforcement of a right which itself does not exist. It goes without saying that an affidavit should be truthful and error free and without doubt "supressio veri suggestio falsi" in an official document, more so in an affidavit which

A

57

~~4~~

was filed in the court, is a serious offence which is culpable if the submissions made therein are maliciously and wilfully false. On the facts of the present case, however, we have no reason to believe that Shri R.Rajamani wilfully and maliciously filed a false affidavit to mislead the court so as to deny the applicants their right. The respondents have themselves admitted their error and have made no attempt to conceal the same from the Tribunal. Shri R.Rajamani has since retired from service and prima facie he would have had no reason to file wilfully a false affidavit.

27. Even without going into any elaborate discussion of the relationship of the AOW vis-a-vis the main Ministry, it is possible to distinguish the case of the applicants with that of Shri Yogesh Bhargava. The applicants were engaged as daily wage workers for the purely unskilled task of filling water in desert coolers for the work which was casual and seasonal in character, and at the end of the summer season when their services were no longer required, they were to be disengaged. On the other hand, Shri Y.Bhargava who had been working as an unpaid apprentice in the AOW since 1988 itself and had been appearing in the AME Exam. conducted by DGCA on the basis of certification issued by the Quality Control Manager, AOW that he had been working in the Organisation and possessed the necessary experience, was appointed as a daily wage worker w.e.f. 1.12.91 for a different type of work which required use of skills as was held in the judgment dated 6.9.93. It is clear that Shri Bhargava's qualifications, nature of duties and responsibilities the type of work he had to perform etc. were quite different from filling water in desert coolers, and

58

under the circumstances the applicants form a class separate and distinct from him. Hence even if Shri Yogesh Bhargava was appointed w.e.f. 1.12.91 in the AOW, the applicants cannot claim to have been discriminated against under Articles 14 and 16 of the Constitution or can legitimately assert any violation of the interim orders dated 26.9.91.

28. In so far as the question of engagement of Sarva Shri Shiva, Pan Singh and Punna Bahadur, the case of Shri Shiva had also been discussed in the CCP, and cannot be reagitated. In respect of Pan Singh and Punna Bahadur, the respondents state that they were disengaged w.e.f 18.10.91 and the applicants have not produced any evidence to controvert this. In so far as the allegation regarding the respondents engaging persons who had not come through Employment Exchange is concerned, we cannot conduct any roving enquiry and in any case no evidence has been produced to establish that after the applicants were disengaged, persons had been engaged who had not been sponsored by the Employment Exchange. As stated above, the case of Shri Yogesh Bhargava falls in a different category by virtue of his qualifications, experience, duties and responsibilities etc. as well as the fact that he was working as an unpaid apprentice in AOW since 1988.

29. As regards the question of there being 17 vacancies of Peons against which the applicants could be appointed even if for a moment it is accepted that there are some vacancies in peon posts, that does not automatically entitle the applicants to be appointed to those posts or even to be appointed against the resultant vacancies consequent to the filling up to the post of peons, and to be continued to be engaged till they are so appointed. As stated, ^{for} ~~that~~ the applicants were appointed for work of casual and seasonal nature which they well knew

59

and had, therefore, no enforceable right to continue when the summer season was over and their services were no longer required.

30. During argument, Shri Raval has alleged that the respondents resorted to get work on contractual basis although that practice was deprecated by Govt. notification. However, this allegation had been made in the CCP also and in the judgment dated 6.9.93 it was noted that the interim orders dated 26.9.91 were themselves modified to make it clear that the respondents would not be prevented from making an alternative arrangement for maintenance of the desert coolers during summer season.

31. During course of argument, Shri Raval referred to various authorities which are briefly discussed below.

32. Firstly, he cited the case of Gurcharan Dass Chadha Vs. State of Rajasthan-AIR 1966 Supreme Court 1418. In that case, while the applicant's petition was pending before the Hon'ble Supreme Court, the State Government served ^{on} him a notice and a charge sheet why he should not be proceeded against for breach of Rule 8 of the AIS (Conduct) Rules, 1954. The Hon'ble Supreme Court held that by taking such action, the State Govt. if not directly, at least indirectly sought to put pressure upon him which amounted to obstruction in the administration of justice. The ruling in Gurcharan Dass's case (Supra) is not relevant to the facts of the present case before us, because at no stage have the applicants alleged that any attempt was being made by the respondents to obstruct the administration of justice and to put pressure upon them. Shri Raval has asserted that the substance of the ruling in

h

60

Gurcharan Dass's case (Supra) has been introduced in Section 19/ CAT Act and has also been followed in the rulings in G.C. Barua Vs. UOI & others -1989(9) ATC 579 and B.C. Bardoloi Vs. UOI- . Be that as it may, the ruling in Gurcharan Dass's case does not advance the applicants' claim.

33. The next ruling relied upon by Shri Raval is Asharam M. Jain Vs. A.T. Gupta- AIR 1983 SC 1151 wherein wild and vicious allegations had been made by one A.M. Jain against the then Chief Justice of High Court of Maharashtra. The Hon'ble Supreme Court had held that contumacious disregard of all decencies exhibited by A.M. Jain could only lead to serious disturbances of system of administration of justice and ,therefore, the Hon'ble Supreme Court declined to accept unqualified apology tendered by him and sentenced him to S.I. for two months. Manifestly, the facts of the present case are entirely different from those in the case cited above, and, therefore, the ruling in that case does not advance the applicants' claim in any manner.

34. The next ruling relied upon by Shri Raval is the case of Pratap Singh & another Vs. Gurbaksh Singh- AIR 1962 SC 1172. In that case, by Govt. order some money was ordered to be recovered from the salary of the Govt. servant for the loss suffered by the Govt. due to his action. The Govt. servant instituted a Civil suit for a declaration that the order for recovery was void and without effect.

There was a State Govt. circular to the effect that it was improper for a Govt. servant to take recourse to a Court of law before he exhausted the

h

61

normal official channels of redress, and that if any recourse to a Court of law was taken contrary to the circular, it would invite disciplinary action. In accordance with that circular a departmental action was initiated against that Govt. servant. The Hon'ble Supreme Court affirmed the view of the Punjab High Court that departmental action against the Govt. servant under such circumstances amounted to Contempt of Court. That ruling also has no relevance to the facts of the present case, because it is not the case of the applicants that the respondents are seeking to put pressure upon them to withdraw any case that they may have filed as was the situation in Pratap Singh's case (Supra).

35. Yet another ruling relied upon by Shri Raval is Balram Singh Vs. Bhikam Chand Jain & others-AIR 1985 SC 1726, wherein it has been held that it would be a travesty of justice if the Court were to allow gross contempt of Court to go unpunished, without an adequate sentence. In the present case as mentioned earlier, the contempt case was itself dropped vide judgment dated 6.9.93 and for the reasons discussed above, even if an error did creep into the affidavit of the then Secretary Shri R. Rajamani, filed in the contempt proceedings, it cannot be said that the same was filed with any malicious, malafide or wilful intent and under the circumstances, this ruling does not advance the applicants' case either.

A

(62) 149

36. Shri Raval has also relied upon the ruling in Tarafatullah Vs. S.N.Maitra & others- AIR 1952 Calcutta 919, but for the reasons discussed above, the applicants' case is not advanced by this authority either.

37. To summarise the applicants in both the O.As were engaged as daily wage workers to perform the purely unskilled task of pouring water in desert coolers during the summer season. They were engaged at the start of the season and when the season was over and their services were no longer required, they were disengaged. Even if other Misc. work was entrusted to them, of similar unskilled nature such as cleaning rooms etc. as claimed by them, it does not detract from the principal task for which they were engaged, namely for filling water in the desert coolers during the summer season which was the work of purely casual nature and seasonal in character. Under the circumstance they can claim no enforceable right to continue to be engaged when their services were no longer required. None of them have produced any materials to establish that they had put in 206 days of continuous service in two consecutive years on the basis of which they could claim continuance and subsequent regularisation. Shri Bhargava's case stands on entirely different footing, because he had been working as an unpaid apprentice in the AOW since 1988 itself and had been appearing in AME Exam. conducted by the DGCA on the basis of certification issued by the Quality Control Manager, AOW that he had been working in the Organisation and had possessed the necessary experience. Thus even if he was engaged w.e.f. 1.12.91, i.e. after the applicants were disengaged, they cannot claim that they have been subjected to hostile discrimination

h

63

because by virtue of educational qualification, his past experience, the different type of work which involved skills as was held in the judgment dated 6.9.93, he falls in a category separate and distinct from the applicant, and hence it cannot be said that Articles 14 and 16 of the Constitution have been violated. The applicants have alleged that certain other persons had been engaged who did not come through Employment Exchange but no evidence has been produced to establish that allegation, and even so it does not advance the applicants' right in any manner. Similarly the allegation that there are existing vacancies in the Environment Ministry which have not been filled up, and if filled up, would release consequential benefits against which the applicants could be engaged, also does not give them a right to continue their engagement in terms of the conditions under which they were appointed.

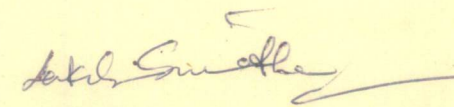
38. Under the circumstances, the reliefs prayed for by the applicants cannot be granted to them. However, we note that judgment dated 6.9.93 in CCP No.76/93 arising out of O.A.No.2240/91, an observation had been made that as and when the question of engaging the services of casual labourers arises, an attempt should be made to accommodate the petitioners. In the background of those observations, we ^{direct an} ~~observe~~ that if in the ensuing summer season of 1995, the respondents are going to engage casual labourers for pouring water in desert coolers, then without foreclosing their

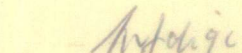
/r

64

option to make any alternative arrangement for water coolers during summer season, they should consider engaging the applicants in both the O.As, in preference to freshers and those with lesser overall length of service.

39. With these ^{directions} ~~observations~~, both the O.As ^{As and connected M.A.s} namely O.A.No.2240/91 and O.A.No.2487/91 stand disposed of. No costs.


(LAKSHMI SWAMINATHAN)
MEMBER (J)


(S.R. ADICE)
MEMBER (A)

/ug/