

(4)

Central Administrative Tribunal
Principal Bench

O.A. No.144/2004

New Delhi this the 5th day of February, 2004

Hon'ble Shri Shanker Raju, Member (J)

Hon'ble Shri Sarweshwar Jha, Member (A)

- 1) Sh. Yog Raj,
S/o Sh. Om Prakash,
Aged about 37 years,
R/o Sec-7, H.No: 15, R.K.Puram,
New Delhi.
 - 2) Sh. Neeraj Kumar,
S/o Sh. Dheer Singh,
Aged about 33 years,
R/o Juggi No: A-365, Ambedkar Basti,
R.K.Puram, New Delhi.
 - 3) Sh. Dharam Vir Singh,
S/o Sh. Dalpat Singh,
Aged about 35 years,
R/o H.No: 38, Harswarup Colony,
Near Fatehpur Beri,
New Delhi.
 - 4) Sh. Ram Singh,
S/o Sh. Balbir Singh,
Aged about 37 years,
R/o F-1472, Netaji Nagar,
New Delhi.
 - 5) Sh. Puran Singh,
S/o Sh. Zile Singh,
Aged about 35 years,
R/o Juggi No: A-245, Kusumpur Pahari,
Vasant Vihar, New Delhi.
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- 6) Sh. Naresh Kumar,
S/o Sh. Kanchi Lal,
Aged about 30 years,
R/o Juggi No: B-137, Ambedkar Basti,
R.K.Puram, New Delhi.
- 7) Sh. Nam Dev,
S/o Sh. Jile Singh,
Aged about 33 years,
R/o Juggi No: A-245, Kusumpur Pahari,
Vasant Vihar, New Delhi.
- 8) Sh. Devi Singh,
S/o Sh. Bharat Singh,
Aged about 37 years,
R/o H.No: 105, Gali No: 5,
Krishna Nagar, New Delhi.
- 9) Sh. Raju,
S/o Sh. Bansi Lal,
Aged about 33 years,
R/o Juggi No: A-358, Ambedkar Basti,
R.K.Puram, New Delhi.
- 10) Sh. Prem Chand,
S/o Sh. Surajbir Singh,
Aged about 31 years,
R/o H.No: 193, Ambedkar Nagar,
Bypass Ghaziabad (U.P).
- 11) Sh. Sanjay Kumar,
S/o Sh. Faquir Chand,
Aged about 31 years,
R/o H-319, Nanakpura,
New Delhi.
- 12) Sh. Suresh Chand Sharma,
S/o Sh. Hamir Sharma,
Aged about 35 years,
R/o H.No: 312, Budh Vihar, Munirka,
New Delhi.



- 13) Sh. Dev Kumar Manjhi,
S/o Sh. Vikram Manjhi,
Aged about 33 years,
R/o H.No: 221, Sec:2, R.K.Puram,
New Delhi.
- 14) Sh. Sanjay Kumar,
S/o Sh. Khazan Chand,
Aged about 30 years,
R/o H.No: 39, Jagdishwali Gali,
Mandwali, Delhi.
- 15) Sh. Shiv Prasad,
S/o Sh. Ram Dev,
Aged about 33 years,
R/o 103, Hanuman Mazdoor Camp,
Sec-1, R.K.Puram, New Delhi.
- 16) Sh. Yogendra Kumar Pandey,
S/o Sh. Nathunji Pandey,
Aged about 33 years,
R/o E-119, Gali No: 68, Madhu Vihar,
New Delhi.
- 17) Sh. Amit Kumar,
S/o Sh. Kishan Gopal,
Aged about 31 years,
R/o H.No: 4/278,
Khichripur, Delhi.
- 18) Sh. Bijender Singh,
S/o Sh. Shibu,
Aged about 30 years,
R/o O-530, Sewa Nagar,
New Delhi.
- 19) Sh. Vijay Pal,
S/o Sh. Bansai Lal,
Aged about 37 years,
R/o Juggi No: A-358, Ambedkar Basti,
R.K.Puram, New Delhi.

(All the applicants are working as Casual Labourers under the respondents).

-Applicants

(By Advocate: Shri S.S. Tiwari)

-Versus-

1. Union of India through the Chairman,
Central Water Commission, Sewa Bhawan,
R.K. Puram, New Delhi-110066.
2. The Director, PCP Directorate,
Central Water Commission, Sewa Bhawan,
R.K. Puram, New Delhi.

-Respondents

(By Advocate: Shri B.S. Jain)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

MA-135/2004 for joining together is allowed.

2. Applicants assailed respondents' order dated 7.11.2003 withdrawing temporary status granted to them. Directions have been sought for quashing the orders and extension of benefit of Para 11 of the decision of the Apex Court in **Union of India & Ors Vs. Mohan Pal & Ors.** (2002 (4) SCC 573 with all consequential benefits.

3. The factual matrix as emerges from the OA is that the applicants earlier had approached this Tribunal for grant of temporary status in terms of DOPT Scheme of 10.9.93 being ongoing. By an order dated 9.11.2000, Tribunal had directed the respondents to consider grant of temporary status to the applicants.

4. The aforesaid decision was carried in CWP 2174/2001 before the High Court of Delhi and by an order dated 9.4.2001, the same was dismissed in limine.

5. Respondents further preferred Special Leave Petition No.7724/2002 before the Apex Court where as an interim order, status quo had been maintained.



6. Meanwhile, the issue whether the DOPT Scheme of 1993 is ongoing or one time. The Apex Court in Mohan Pal's case (supra) held the scheme to be ongoing but protected those who had already been accorded temporary status on the assumption of ongoing scheme and had been directed that their temporary status shall not be stripped.

7. In SLP 7724/2002 as the issue was found to be squarely covered by the decision of Mohan Pal's case (supra), the same was disposed of in the terms of decision of Mohan Pal's case (supra) on 11.8.2003.

8. Applicants were accorded temporary status as a compliance of the decision of the Tribunal in OA-1623/2000 which had been subjected to outcome of SLP filed in Union of India Vs. Yog Raj & Others.

9. After the decision of the Apex Court in SLP-7724/2002 (supra), temporary status already granted to the applicants ^{was} withdrawn.

10. Another set of casual workers who had been granted temporary status in view of OA-1623/2000 being aggrieved with the withdrawal of temporary status filed OA-1637/2003. By an order dated 16.10.2003 passed by a Single Bench interpreting the decision of Mohan Pal's case (supra) as in the case of Brahma Singh. SLP was allowed holding that once the scheme has been held to be one time and the temporary status was granted to the outcome of SLP, the same cannot be sustained. In Nutshell, the action of the respondents was found justifiable.

11. Learned counsel for applicants Shri S.S. Tiwari referred Para-11 in Mohan Pal's case (supra), which is re-produced as under:-

"11. In Civil Appeals Nos. 3168, 3182, 3179, 3176-78 and 3169 of 2002 arising out of SLPs (Civil) Nos. 2224 of 2000, 13024, 1563 of 2001, 17174-76 and 2151 of 2000, the respondents have been given "temporary" status, even though, they did not specifically fulfil the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the Scheme of 1.9.1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given "temporary" status on the assumption that it is an ongoing scheme shall not be stripped of the "temporary" status pursuant to our decision".

12. In the aforesaid backdrop, what has been contended that the SLP in the case of applicants has not been dismissed but was disposed of in terms of decision of the Apex Court in Mohan Pal's case (supra) which, inter alia, includes protection of temporary status already granted to the casual workers on the assumption of ongoing scheme. It is stated that the decision in SLP has been misinterpreted and misconceived by the respondents. Moreover, it is stated that even in the order passed by the Tribunal in contempt, the grant of temporary status has not

been subjected to outcome of the SLP. However, the SLP is decided in terms of decision in Mohan Pal's case (supra) where in Para-11 the rights of the applicants are protected. He also highlights the status quo granted by the Apex Court in SLP and states that their cases cannot be treated in paramateria with Brahma Singh's case (supra) where there is no stay and the SLP was allowed.

13. Shri S.S. Tiwari relied upon the decision of Apex Court in **Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others** (2002) 4 SCC 21 to contend that an unambiguous order of a court is not capable of more than one interpretation and this would amount to contempt of court.

14. By referring to the decision of Apex Court in **Rupa Ashok Hurra Vs. Ashok Hurra** (2002) 4 SCC 388, a constitutional Bench decision it is stated that law declared by the Supreme Court is law of the land and is precedent for all courts and Tribunal. In this backdrop, it is stated that the decision of the Single Bench in OA-1347/2003 is per incuriam of the Apex Court.

15. Shri B.S. Jain, learned counsel appeared with departmental representative and produced before us all the relevant documents and vehemently opposed the contentions. According to him, as the temporary status accorded to the applicant is subject to outcome of SLP and as the Tribunal had allowed the claim of applicants on the assumption of ongoing scheme in the



light of decision in Mohan Pal's case (supra) once the scheme has been ordered to be one time, applicants have no right to retain the temporary status.

16. Moreover, it is stated that there is no difference in disposal or allowing of SLP as in both the events SLP was not dismissed. Moreover, the decision in Mohan Pal's case (supra) and the terms, therein, have been followed by the Apex Court to hold implidly that this scheme is one time, the protection of para-11 is not available to the applicants as their cases have been subject to the final outcome of SLP.

17. We have carefully considered the rival contentions and perused the material on record.

18. In so far as decision in Brahma Singh's case (supra) OA-1347/2003 by a Single Bench is concerned, Apex Court in **State of M.P. Vs. B.R. Thakre** 2002 (10) SCC 338 in respect to a State Administrative Tribunal which in paramateria applies to the Central Administrative Tribunal as well held that important question of law involving interpretation should not have been dealt with by a Singal Bench.

19. However, we find that the applicants in Brahma Singh's case (supra) have not been protected by the status quo order during the pendency of SLP. Moreover, the observation of the Single Bench has two interpretation that the scheme is not ongoing and held in Mohan Pal's case (supra) and as the order granting temporary status has been passed subject to outcome of



SLP cannot be countenanced. A decision which is per-incuriam of Supreme Court decision or is in-ignorance of the ratio decidendi cannot be law within the doctrine of precedents. We find that in Para 11 irrespective of anything in analogy that if the temporary status accorded is on the assumption of ongoing scheme, the same cannot be divested away and would not be withdrawn. The decision of the Single Bench has not taken into consideration. As such, we have no other option but to ignore the same.

20. In so far as the issue of grant of temporary status to the applicant subject to outcome of SLP is concerned, there was no such condition imposed by the Tribunal while allowing the OA and also by the High Court while affirming the decision. Even without mentioning incorporating such a clause, any decision rendered by a lower court is always subjected to the results of the higher court. However, we find that during the pendency of SLP, in Yog Raj's case (supra), status quo was maintained. However, the Apex Court disposed of SLP in terms of the decision of Union of India & Anr. Vs. Mohan Pal. One of the terms in Mohan Pal's case (supra) though the Apex Court has held the Scheme to be one time, the Para-11 of the decision protected those who had already been given temporary status on the assumption of ongoing scheme, their temporary status mandated by use of word "shall" not to be "stripped of". It is merely because grant of temporary status is subject to the outcome of SLP would not preclude the applicants ^{from} claiming benefit of Para-11 *ibid*. But the fact remains that on the assumption of ongoing scheme, the Tribunal



has granted temporary status which was affirmed by the High Court. The order passed by the respondent is only its compliance. Moreover a decision of the Apex Court cannot be read in isolation, Para-11 is part and parcel of decision and constitutes its term. As the Apex Court in the terms of Mohna Pal's case disposed of SLP, the respondents are obligated to consider Para-11 as well which protects stripping of temporary status which had already been granted.

21. Be that may so, we are satisfied with grant of temporary status to the applicants is on the assumption of ongoing scheme. As such, being a binding precedent in the light of the constitutional decision of the Apex Court in Rupa Ashok Hurra's case (supra) as there is no in-consistency between the decision in SLP and Mohan Pal's case, the action of the respondents is not sustainable in law.

22. In the result, for the forgoing reasons, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to restore the benefit of temporary status to the applicants in the light of Para-11 of Mohan Pal's case (supra) with all consequential benefits within a period of two months from the date of receipt of a copy of this order.

(Sarweshwar Jha)
Member (A)

(Shanker Raju)
Member (J)

cc.