

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1451/2004

New Delhi this the 2nd day of November, 2004

Hon'ble Shri S.K. Naik, Member (A)

Shri Swapan Kumar Das,
S/o late Shri B.N. Das,
R/o near D-266, Kidwai Nagar (East),
New Delhi and working as Casual Labour
in Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi.

.... Applicant.

(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)

O R D E R

By virtue of an order passed by this Tribunal in OA 1814/2000 decided on 23.1.2001, the applicant, Shri Swapan Kumar Das, was accorded temporary status vide order dated 01.01.2002 passed by Respondent No. 2. The same has now been withdrawn by the respondents vide their order dated 21.05.2003 (Annexure 'A') stating therein that this decision has been taken in pursuance of the Hon'ble Supreme Court of India order in Civil Appeal No. 6385 of 2002 arising out of Civil Appeal No. 6385 of 2002 arising out of SLP © No. 7727/02; Civil Appeal No. CC 295/2002 and also as per advice of the Ministry of Law, Department of Legal Affairs.

S.K. Naik

2. Aggrieved thereupon, this O.A. has been filed praying for setting aside and quashing of the order dated 21.05.2003 and further direct the respondents to give applicant the benefit of Para 11 of the decision in the case of Union of India & Ors. Vs. Mohan Pal & Ors. (2002 (4) SCC 573) and restore his temporary status. Consequential benefit and grant of relief also has been prayed for.

3. The brief facts of the case are that the applicant while working as a casual labourer had filed O.A. No. 1814/2000 seeking temporary status which was allowed by the Tribunal vide its order dated 23.01.2001. The order of the Tribunal was challenged by the respondents before the High Court in CWP No. 4631/2001 which, however, was dismissed on 02.08.2001. The respondents subsequently filed an SLP before the Hon'ble Supreme Court, which was decided on 19.8.2002 with the following order:

“Delay condoned.

Heard on the question of admission. The respondent has been given temporary status prior to the date of decision of this Court, i.e., 29.4.2002 in Civil Appeal No. 3168/2002 (2002) 4 SCC 573. Respondent shall be governed by that decision. The special leave petition is dismissed as not admitted”.

4. The learned counsel for the applicant contends that when the claim of the applicant for the grant of temporary status has been upheld by the Tribunal and the challenge of the respondents before the High Court has failed and further when the Supreme Court has dismissed the SLP in limine, there was no reason for the respondents to have acted otherwise than to continue with the temporary status which they had themselves accorded vide their order dated 01.01.2002.

5. Referring to Para 11 of the judgement passed by the Hon'ble Supreme Court in the case of Mohal Pal (supra), in which it has been stated, “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 of our decision”, the learned counsel argues that the applicant would be legally entitled to

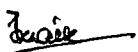
Deo



the temporary status in view of this judgement of the Supreme Court since he had been engaged prior to the commencement of the Scheme and fulfilled the criteria laid down therein. Further, since the temporary status had been granted to him on the assumption that it was an ongoing Scheme, the same status could not be taken away from him as per this judgement.

6. The learned counsel has further referred to a judgement of this Tribunal in the case of Yog Raj and Ors. Vs. Union of India (OA 144/2004), decided on 5.2.2004 and has contended that the issue for adjudication before the Tribunal in that matter was very similar to the case in hand where the temporary status had been withdrawn ^{by the} ~~from~~ the same respondents and SLP had been disposed of in terms of Mohan Pal's decision (supra). This Tribunal has, however, held that the action of the respondents in withdrawing the temporary status granted prior to Mohan Pal's decision is illegal. The learned counsel, therefore, submits that this judgement which has been delivered by the Division Bench of this Tribunal and which has already held the decision of the respondents in withdrawing the temporary status to be illegal has to be followed in the present case.

7. The respondents have contested the O.A. The learned counsel for the respondents at the outset has raised a preliminary objection that the O.A. is not maintainable. He contends that the order dated 21.05.2003 which has been assailed in this O.A. was earlier challenged before this Tribunal by a separate set of casual labourers in O.A.1347/2003. The grounds advanced therein were very similar to the ones now being advanced by the present applicant and the Tribunal after a thorough discussion of all the pleadings therein had dismissed the same. He has pointed out that 29 labourers had been conferred the temporary status under the directions of the Tribunal. The order of the Tribunal, however, had been challenged before the High Court which too had dismissed the same. Thereafter, the respondents had taken up the matter in SLP which was, however, ^{allowed} ~~accepted~~ by the



Hon'ble Supreme Court. The applicants therein had relied upon the same Para 11 of the judgement for the continuance of the temporary status but the Tribunal after a thorough discussion of the pleadings therein had dismissed the same on 16.10.2003. The learned counsel further contends that the present applicant was one of the same list of 29, who had not joined the others in the earlier O.A. and has now preferred this O.A. by himself. Since the very order dated 21.05.2003 was earlier challenged and it has already been adjudicated upon, the same cannot be challenged once again by the present applicant and the O.A., therefore, is no longer res integra. The counsel, therefore, submits that on this ground alone, the O.A. deserves to be dismissed.

8. The other objection that has been raised by the learned counsel for the respondents pertains to the O.A. having been filed after the prescribed period of limitation. I, however, find that the applicant has filed M.A. No.1219/04 for condonation of delay. He has stated therein that there has been a small delay of only 14 days, which was primarily because of his inability being a poor casual labourer to pursue an I.A. which had been filed before the Supreme Court and which had to be withdrawn before the O.A. could be filed before this Tribunal.

9. I have considered the objection with regard to the question of delay and find that in view of the reasons advanced by the applicant in M.A. 1219/2004, the delay of 14 days deserves condonation.

10. Arguing on the merits of the case, learned counsel for the respondents has, apart from the point of res integra which he has raised in the Preliminary Objections, contended that the order dated 16.10.2003 passed in O.A.1347/2003 has been challenged by the applicants before the High Court and the same is yet to be decided. On this ground alone, he contends that the challenge is not maintainable.

11. On the contention raised by the learned counsel for the applicant that the SLP filed by the respondents before the Apex Court against the order conferring

Deoik

temporary status which had been upheld by the Tribunal and the High Court had acquired finality since it was dismissed by the Supreme Court in limine, the learned counsel for the respondents contends that the SLP, in fact, had not been dismissed in limine. On the contrary, the Supreme Court had categorically stated that the respondents (the applicant herein) shall be governed by that decision, meaning thereby that Mohan Pal's decision (supra) will govern the outcome of the SLP as well. The SLP had been dismissed as not admitted. With this observation of the Supreme Court, it would, therefore, be wrong to contend that the Supreme Court had confirmed the decision of the High Court.

12. On the reliance placed by the counsel for the applicant on Para 11 of the judgement of the Supreme Court in Mohan Pal's case (supra), the learned counsel has contended that the judgement as a matter of fact goes against the applicant and in favour of the respondents inasmuch as it states "...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 of our decision" (Emphasis added).

13. The counsel submits that whether the Scheme was ~~an~~ on going or not has to depend on the employer and as the respondents have through out taken the stand that the Scheme was only one time which had not been accepted by the Tribunal and the High Court but upheld by the Supreme Court, it has to be held that in view of the judgement of the Supreme Court, the Scheme was not on going. Since it was not on going Scheme and the temporary status had been conferred only in obedience of order of the Tribunal and the High Court during the pendency of the matter before the Supreme Court and the order clearly states that the conferment of temporary status is subject to the outcome of the SLP, the respondents are fully and legally entitled to withdraw the same.

14. With regard to the reliance placed by the learned counsel for the applicant in judgement of the Tribunal in OA 144/2004, the counsel for the respondents has

7
decade

10

contended that the same would not be of much help to the applicant inasmuch as the order impugned therein was totally different. Besides, the Division Bench in the same judgement has not overruled the judgement of the Single Bench in O.A. No. 1347/2003. He has, therefore, contended that there is nothing illegal or arbitrary about the order which has been impugned.

15. I have considered the contentions raised by the learned counsel for the parties as also have perused the records of the case.

16. There are two main points for adjudication in this O.A; firstly, whether the action of the respondents in withdrawing the temporary status vide order dated 21.05.2003 is legally justified and secondly, whether the judgement passed by the Division Bench of this Tribunal in OA No. 144/2004 will be binding on the facts and circumstances of the present case.

17. I find that the respondents have withdrawn the temporary status relying upon the judgement of the Supreme Court in Mohan Pal's case (supra). The import of Para 11 of the order of the Supreme Court, on which both sides are placing reliance for their decision, has been discussed in the judgement in O.A. 1347/2003 with reference to the facts of the case and it would be useful to extract the view therein which is as under:

"In my view this interpretation put forth by the applicants has no merits because the respondents throughout had been representing that the scheme is one time scheme and is not an ongoing scheme and it is only because of that the respondents had gone to the Hon'ble Supreme Court in SLP. SLP has been allowed following the judgement of Union of India vs. Mohan Pal which means in this case also it has been held that the scheme is one time scheme and not an ongoing scheme. So the resistance put forth by the respondents to grant temporary status was allowed from the stage of the OA and that it is a one time scheme has been upheld by the Hon'ble Supreme Court and since the order granting temporary status has been passed subject to the outcome of SLP, so the applicants cannot say that this order could not have been made subject to the outcome of the SLP".

18. Since the order under challenge in this O.A. is the same order which was challenged in O.A. 1347/2003 and the facts too are same, I am of the view that I will

Decide

have to follow the same judgement even though it may have been delivered by a Single Bench.

19. It is also a fact admitted on either side that the order of the Tribunal in O.A.1347/2003 has been challenged by the applicants before the Hon'ble High Court and the matter as of now is sub judice. As and when the same is decided, the order of the Hon'ble High Court would in any case be applicable both for the Tribunal as also to the parties concerned.

20. In so far as the second issue concerning the judgement passed by the Division Bench of the Tribunal in O.A. 144/2004 is concerned, I am inclined to agree with the contentions of the learned counsel for the respondents that the same would not be applicable to the facts of the present case since the order under challenge therein was a totally different one and herein it is only the same very order being challenged which has already been adjudicated upon. Thus, in my view, it is not incumbent upon me to follow this judgement.

21. Under the circumstances and in view of the discussions above, I am of the view that the impugned order has been rightly passed by the respondents and, therefore, the O.A. has no merit and is accordingly dismissed with no order as to costs.


(S.K. Naik)
Member (A)

'SRD'