

5

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1769/2004

New Delhi this the 20th day of September, 2004

Hon'ble Shri S.A. Singh, Member (A)

In the matter of

1. Roshan Lal,
S/O Sh.Ramu Paswan,
R/O I-300, IARI, Pusa,
New Delhi-12
2. Sanjay Bitoni,
S/O Shri Yograj,
R/O 9544/14, Gaushala Baradari,
New Delhi-110006
3. Naresh Kumar,
S/O Shri Sita Ram Paswan,
R/O I- 291, IARI, Pusa, New Delhi

Applicants

(By Advocate Shri Naresh Kaushik)

VERSUS

1. Union of India,
through its Secretary,
Department of Agriculture,
Krishi Bhawan, New Delhi.
2. Dy. Director General (Education),
Indian Council of Agricultural Research
ICAR, Krishi Anusandhan Bhawan,
PUSA, New Delhi-110012
3. Deputy Secretary (Education),
Indian Council of Agricultural Research
(ICAR) PUSA, New Delhi-110012

Respondents

(By Advocate Shri B. S. Mor)

dr

7

O R D E R

Hon'ble Shri S.A. Singh, Member (A)

Indian Council of Agricultural Research (ICAR) has one education division for conducting All India Entrance Examination for admission in the State Agricultural Universities/ Central Agricultural University/deemed Universities for under Graduate and Post Graduate Course for all India fixed percentage of seats. Examinations are conducted in the months of May and June, every year. According to the respondents, during the period of examinations additional work is generated for 3 to 6 months, and persons are engaged on daily wage basis/contract basis for this work. On completion of the examination, daily wage /casual workers are disengaged. As this work is of seasonal nature and of short duration regular posts cannot be created. The respondents stated that during 1998-2002 they were engaging daily wage basis workers, however, from 2003 onwards the respondents are engaging a contractor for this work and persons are not being directly engaged on daily wage basis by the respondents but on contract basis. There is, thus, no relationship of employer-employee between the applicants and the respondents.

2. It is the grievance of the applicants that though they were engaged by Respondent No.2 through the Employment Exchange for conducting the various examinations, they were engaged on casual basis even though the work was available around the complete year and was perennial and permanent in nature. This is apparent from a

✓

study of the office orders placed at pages 20,21, 33, 40, 45 and 46. Despite the work being continuous the applicants were appointed for 60 days at a time and then, after introducing artificial breaks of one day to deny the legitimate rights for regularization, re-appointed.

3. The applicants relied upon the decisions of the Hon'ble Supreme Court as well as High Court in the case of **Jaipal Vs. State of Haryana** (1998 (3) SCC 634) and **Bhagwan Dass Vs. State of Haryana** (1987) 4 SCC 634) wherein it has been held that artificial breaks to be totally illegal and an unfair practice.

4. Applicants pleaded that respondents have now devised a new mechanism of contract employment by engaging them through a system of contractor. They have converted them into contract workers through a contract with M/s Sybex Computer System Pvt. Limited. This action of respondent No. 2 is totally violative of the fundamental rights of the applicants, guaranteed under Articles 14 and 21 of the Constitution.

5. Accordingly, the applicants pray that the respondents be directed to continue the employment of the applicant No.1 and 2 until their regularization and to direct them to consider the applicants for regularization in the posts for which they have been employed with consequential benefits. They have also prayed to direct the respondent to reinstate applicant No 3 because his services have been discontinued. Counsel for the applicant also pleaded that as a welfare State social security is a guiding principle of State policy, hence

d

changing the status of the applicants is unfair and violative of their rights

6. The applicants relied upon the judgements of the Hon'ble Supreme Court in the case of **Gujrat Agricultural University Vs. Rathod Labhu Bechar and others** (2001)3 SCC 574) where it was held that when work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers and in the case of **G. B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of UP and Others** (2000) 7 SCC 109) it was held that in socialistic concept of the society as laid down in Parts III and IV of the Constitution ought to be implemented in the true spirit of the Constitution and that pragmatic does not necessarily mean deprivation of the legitimate claim of the weaker section of the society. In view the judgements, the applicants pleaded that it was incorrect on the part of the respondents to discontinue them and denying them their legitimate rights of regularization as employee of the respondents.

7. The case was vehemently contested by the respondents with the preliminary objection that the applicants are not engaged by the respondents but through the contractor, namely, M/s Sybex Computers System Pvt. Ltd. Hence the applicants have no locus standi to file the present original application and also they have not challenged any specific order of the respondents, hence, the OA is not



9

maintainable under Section 19 of the Administrative Tribunals Act, 1985. The applicants have also not exhausted the alternative remedies as specified in Section 20 of the Administrative Tribunal Act and, therefore, the present OA is liable to be dismissed on this ground.

8. The applicants contested the preliminary objection of the respondents that the cause of action has arisen on account of the engagement of the applicants by the respondents and then reengaging them through the contractor and as such the OA is maintainable against the respondents. Further, It is not necessary to challenge any specific order of the respondents as Section 19 does not debar challenge in absence of a specific order. The applicants also stated that in view of the peculiar status of the applicants there is no alternative remedies available to them, hence the contention of the respondents that the applicants have not exhausted all remedies available to them and hence the OA may be dismissed, is not maintainable.

9. As far as the question of preliminary objection is concerned, I find little force in all the three objections of the respondents. The applicants were initially directly engaged as casual workers by the respondents and then they have been engaged through a contractor. Their grievance has arisen because they are now being employed through a contractor hence the objection of the respondents is without merit as is the objection of not challenging a specific order. Moreover, the applicants have no formal channel of appeal available,

2

hence to deny them approaching the Tribunal on this ground would also not be correct.

10. The respondents have stated that they have 187 centres for recruitment where examination are held. During the examination season they need additional work hence work cannot be considered to be permanent in nature. The office order dated 18.5.1998 (page 20 of the paper book) and other similar office orders make clear that employment was seasonal. Statements attached as Annexure A 1 also show that none of the applicants have been employed for more than five months and they have also not completed 240 days of work in any year. Their work was restricted because it was seasonal employment. No permanent post as per rules could be created for seasonal worker and as per DOP&T circular they are not eligible for regularisation.

11. The applicant contended that though the respondents claim that they have engaged them through a contractor, in fact, they have engaged them through the Employment Exchange after duly being selected. This is apparent because the expenditure of their engagement would be met from Revolving Fund Scheme of All India Entrance Examination in Education Division as per the notings placed on record and hence cannot be considered as being employed through a contractor, namely, M/s Sybex Computers System Pvt. Ltd., there, thus, exists an employer-employee relationship.

12. Heard the counsel for the parties and gone through the documents on records. I find that the question for consideration before the Tribunal is whether the applicants, during their engagement with

L

the respondents, can be considered to have accrued the right for regularization.

13. The principle laid down for regularization in **Ashwani Kumar Vs. State of Bihar and Ors** (1997) (1) SLJ 178 (SC) stated that regularization can be done- Where there are clear vacancies of long duration and appointments on ad hoc basis by competent authority are continued for a long time- subject to appointment following rules/regulations. The applicants have not been able to show that they had appointed against any clear vacancies and they have continued uninterruptedly for a long time even with artificial break. On the other hand, the respondents have shown that they were employed as daily wage basis for examination duty which was seasonal in nature.

14. I find that the employment of the applicants would come under the definition of seasonal employment as defined in Black's Law Dictionary which reads as under:-

"As used in compensation laws, as basis for determining right to and amount of compensation, refers to occupations which can be carried on only at certain seasons or fairly definite portions of the year, and does not include such occupations as may be carried on throughout entire year".

From the above reading of the definition, it is clear that seasonal employment is that employment which can be carried on only at certain seasons or fairly definite portions of the year and no such employment may be carried out throughout the entire year. It is not contested that the applicants have been employed for conducting the




-8-

examinations which were held in the month of May and June every year. The respondents have also stated that they are unable to regularize the applicants as no posts have been created as per the Govt. of India, Department of Personnel and Training OM dated 30.5.1989 issued guidelines in the matter of recruitment of casual workers on daily wage basis in view of the Apex Court judgement delivered on 17.1.1996 in the Writ Petition filed by Shri Surinder Singh and Ors which reads as under:

"(i) Persons on daily wages should not be recruited for work of regular nature.

(ii) Recruitment of daily wagers maybe made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created."

15. The applicants were clearly recruited for examination duty held in May and June every year and not against any clear vacancies. Moreover, the applicants have not continuously worked against any posts for a long time as they have not been able to show that they have worked for 240 days in any year. Moreover as causal labourer employed for a limited period they have no inherent right for employment after the expiry of the period of their employment as per the ratio in **Director, Institute of Management Development, UP Vs. Smt. Pushpa Srivastava** (JT 1992(4)SC 489) and as such the OA is dismissed on these grounds alone. No costs.


(S.A.Singh)
Member(A)

sk