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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1989/2004

New Delhi this the 25th day of August, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

1. Kanwar Pal S/O Sh. Ram Phul
R/O H No. A-361, Sanjay Colony,
Okhla Phase-II, New Delhi-20
2. Pawan Kumar Sahu S/O Sh. Dineshwar Sahu,
R/O H. No. D-374, West Vinod Nagar,
Delhi-110092
3. Ram Niwas S/O Shri Rishi Raj,
R/O Village and PO Asaudha Bhadur Garh,
Jhajjar, Haryana.

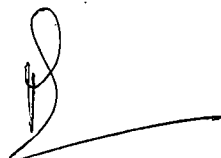
..Applicants

(By Advocate Shri Sanjeev Mehta)

VERSUS

Union of India through:

1. The Secretary,
Ministry of Statistics & Program Implementation,
Sardar Patel Bhawan, Sansad Marg,
New Delhi.
2. The Principal Accounts Officer,
C/O Principal Account Office and
Pay and Account Office, Ministry of Statistics,
Sardar Patel Bhawan, Sansad Marg,
New Delhi.
3. The Chief Controller of Accounts,
Yojna Bhawan, Sansad Marg,



New Delhi.

..Respondents


(By Advocate Mrs. Meenu Mainee)

O R D E R

This OA has been filed by 3 applicants who have sought quashing of order dated 14.7.2004 and regularisation of their service. They have also prayed for re-engagement and grant of temporary status.

2. It is submitted by applicants that they were engaged as Safai Karamcharis, Sweeper/Peon after their names were sponsored by Employment Exchange and they were selected after being interviewed initially for 89, days which was extended from time to time. They have worked for 291 days from 24.3.2003 to 17.1.2004 yet their services have been terminated from 17.1.2004 which is wrong and illegal. They have submitted that they are entitled to get temporary status and regularization because work is still available which is evident from the fact that respondents have sent fresh requisition to the Employment Exchange.

3. Being aggrieved they filed OA 238/2004 which was disposed off on 11.2.2004 by directing the respondents to dispose off their representation by a speaking order. The respondents have passed order dated 14.7.2004 whereby applicants were informed that they do not need any casual labour at present. It is this order, which is challenged by applicants. They have relied



on **Union of India and another Vs. Mohan Lal** 2002(3)RSJ (SC) 627 and 1996 (10) SCC 133.

4. Respondents have opposed this OA by stating that applicants were engaged as casual labourers for filling the water in coolers w.e.f. 1.4.2003 which came to an end on 17.1.2004 as they were not required thereafter. They have explained applicants worked for 195, 196 and 194 days respectively. Their attendance was monitored by Principal Accounts Office, Ministry of Statistics and Programme Implementation. The certificates relied by applicants are issued by a Steno. of the cadre of main Ministry which is different from accounts organization the certificates can be given only by Controller/Dy. Controller of Accounts or Sr. Accounts Officer (H.Qrs.). Temporary identity cards were issued for security purposes. They have stated that applicants were engaged for dusting and arranging the record month/year wise for some time after the summer season as per the requirement. They are not entitled to temporary status as 1993 Scheme was one time measure and is not applicable in the present case as applicants were not employed as on 1.9.1993. They have also explained that no requisition has been sent by them to Employment Exchange, therefore, the OA maybe dismissed. They have relied on 2002 (4) SCC 573.




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5. By way of M.A applicants placed on record the notings from the official files to show that they were given extension from time to time and other persons are still being continued, even though they were engaged after the applicants. Respondents have, however, taken serious objection to it by stating that these are confidential documents which could not have been procured by applicants in normal course and it only proves that integrity of applicants is doubtful and they are not fit to be retained in Govt. service. Moreover advertisement was not given by Principal Accounts Office nor the persons whose identity cards are annexed were engaged by the respondents office. Accounting Office is separate from the Ministry. They have thus prayed that OA and MA both may be dismissed.

6. I have heard both the counsel and perused the pleadings as well. As far as regularization is concerned Hon'ble Supreme Court has clearly held in the case of **Mohan Pal Vs. Union of India and others** (2002 (4) SCC 573) that the Scheme dated 1.9.1993 is one time measure applicable to only such of the casual labourers who were in employment on the date of commencement of the Scheme i.e. 1.9.1993. Clause -IV does not envisage it to be an ongoing Scheme.

7. From the above judgment, it is seen that the Scheme of 1.9.1993 was applicable only to such casual labourers who were in employment as on



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1.9.1993 and had rendered a continuous service of at least one year i.e. at least 240 days in a year or 206 days in case of offices observing 6 days or 5 days in a week respectively whereas admittedly none of the applicants was in employment with the respondents as on 1.9.1993. Therefore, neither they can be considered for grant of temporary status nor have any right to get regularization. It is applicants' own case that they were engaged for the first time on 24.3.2003 for a period of 89 days initially which was extended from time to time. They were disengaged w.e.f. 17.1.2004. It is thus clear that they cannot get the benefit of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 for temporary status or regularisation. The question of reengagement can be considered, only if the work was still available with the respondents and persons junior to applicants were retained by the respondents. On this point applicants have relied on an advertisement dated December, 2003 though respondents have stated that the office of Principal Accounts is different from the Ministry but it is seen that the advertisement was given by the Ministry of Statistics and Programme Implementation and even applicants were appointed by Principal of Accounts Office, Ministry of Statistics and Programme Implementation and even the impugned order is issued by Principal Accounts Office, Ministry of Statistics and Programme Implementation which clearly shows Principal



Accounts Office is a part of Ministry of Statistics and Programme Implementation. Moreover from the reply filed by respondents also it is seen, that the office of Principal Accounts comes under the Ministry of Statistics and Programme Implementation, therefore, it is wrong to suggest that the office of Principal Accounts is different from the Ministry of Statistics and Programme Implementation. Para 1 of the counter affidavit for ready reference reads as under:-

“That it is submitted in summer season services of casual labourers for filing the water in coolers in Pr.Accounts Office, M/O Statistics and P.I., Pay & Accounts Office (Planning) and O/O the Controller of Accounts, M/O Planning Statistics & Programme Implementation were needed and thus, the names of Casual Labourers were got sponsored by employment exchange as per Govt. instructions prescribed for engagement of Casual Labourers. Out of the names sponsored by the employment exchange, Sh. Devender Kumar, Sh. Kanwar Pal Singh, Sh.Pawan Kumar Sahu and Sh.Ram Niwas were engaged w.e.f. 1.4.2003 for the number of days mentioned against each of them and their services stands terminated w.e.f. 17.1.2004. Their services were availed of in piece meal after giving proper break”.

From the above office of Principal Accounts clearly seems to be under Ministry of Statistics and Programme Implementation. Principal Accounts Office has not stated they are independent of Ministry. Therefore, if there was a vacancy advertised by the Ministry for the post of Peon and one of the applicants who had already been working with the office had applied for it, his case should have been considered for the same by giving him



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relaxation in age for the period for which he had rendered his services with the respondents. However, the said advertisement was given in the year 2003 whereas the present OA itself has been filed in August, 2004, therefore, it is not known whether the said vacancy has been filled up already or not. In case some person has already been appointed pursuant to the advertisement as annexed by the applicants at page 145, no order can be passed at this stage to quash the appointment of the said person because he has not been impleaded as a party in the present petition and law is well settled that no adverse order can be passed on the back of an individual and that too without giving him an opportunity of hearing. It is, however, clarified that if respondents need to appoint more class- IV employees or engage casual labour again in the summer season, they shall consider the candidature of applicants also before engaging other freshers from the open market provided they had worked satisfactorily.

8. Counsel for applicant has relied on the judgment of **Central Welfare Board and Ors. Vs. Anjali Bepari and Ors** given by the Hon'ble Supreme Court reported in 1996 (10) SCC 137) but that case would not attracted hereinasmuch as in that case, the respondents were appointed against casual




vacancy in Central Social Welfare Scheme Board and were continued as such for a long period of over three years. Even though that project had wound up but there were other projects which were still operating and the casual labourers therein were continuing. It was in those circumstances that Hon'ble Supreme Court directed the Board therein to continue the respondents in any other temporary Scheme and to consider, the respondents who were retrenched, in future vacancies without requisitioning names from the Employment Exchange that too in accordance with seniority. It was also held therein that for the purpose of retrenchment principle of last come first go shall apply. Technically speaking the said judgement will not be applicable in the present facts because there casual labourers were engaged in projects which were continued from time to time whereas in the present case, respondents have stated categorically that they do not need any casual labour at present. Therefore, in the absence of any work, no direction can be given to the respondents to reengage the applicants. Therefore, the relief as sought for by the applicants cannot be given to them. The only relief that can be given is that in case the respondents need to reengage casual labour in future they shall consider the



applicants as well for reengaging them in preference to freshers and juniors from open market.

9. With the above directions, OA stands disposed of. No order as to costs.


25/8/05.

(Mrs. Meera Chhibber)
Member (J)

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