

IN THE CENTRAL ADMINISTRATILVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1305/1992

Date of Decision: 18.11.1992

(b)

Shri Surinder Kumar Raina

...Applicant

Vs.

Union of India & Others

....Respondents

For the Applicant

...Mrs. Rani

Chhabra, Counsel

For the Respondents

..Shri M.L. Verma,

Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *No*

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JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

Common questions of law have been raised in a batch of applications filed by the casual labourers working in the Department of Telecommunications under the Ministry of Communication. It is proposed to deal with them at the outset and dispose of the individual applications by separate orders as the facts of the cases are not uniform.

2. The legal issue involved is whether such of those applicants who have worked as casual labourers in the Department of Telecommunications and in the various projects under its different units located at different places are entitled to the benefit of the scheme prepared by the said Department entitled " Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989" which came into force with effect from 1.10.1989 onwards. The applicants were engaged as casual labourers after 30.03.1985. The respondents have taken a policy decision in their circular letter dated 22.04.1987 not to consider the regularisation of such casual labourers under the aforesaid scheme in view of the policy decision taken by them to retrench all such persons recruited after 30.03.1985.

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3. The validity of the cut-off date of 30.3.1985 in the context of regularisation of casual labourers has been considered by this Tribunal in numerous decisions as well as in the Supreme Court. In Writ Petition No.1041 of 1980 filed in the Supreme Court which was disposed of by the said court by order dated 6.3.1992, the respondents had stated in their counter-affidavit that a guideline concerning regularisation of casual labourer has been framed by the Government wherein a cut-off date, i.e., March 30, 1985 has been adopted and under that policy casual labourers who are engaged after March 30, 1985 cannot be absorbed and their services have to be discontinued. In the rejoinder-affidavit filed on behalf of the petitioners, it had been pointed out that the said scheme fixing the cut-off date as March 30, 1985 has been held to be invalid by this Tribunal. It had also been pointed out that the Government has framed another scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989. Thereunder temporary status is to be conferred on all casual labourers currently employed and have rendered continuous service of at least one year out of which they must have been engaged for work for a period of 240 days in the calender year and the rights of such temporary employees have been set out in Para 6 of the said scheme. The Supreme Court held that "Since the petitioners

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have completed more than one year's service and they have been engaged for work for a period of 240 days in the calender year, they are entitled to the benefit of this scheme". Accordingly, the Supreme Court allowed the Writ Petition with the direction that the petitioners may be given the benefit of the said scheme (Vide Raj Kishore & Others Vs. U.O.I. & Others).

4. The applicants before us are also seeking the benefit of the said scheme which had been prepared pursuant to the directions contained in the well known case of Daily Rated Casual Labour employed under P&T Department Vs. Union of India, 1988 SCC(L&S) 138. A copy of the said scheme was placed for the consideration of the Supreme Court in Jagrit Mazdoor Union Vs. Mahanagar Telephone Nigam Ltd., 1990 SCC(L&S) 606. The Supreme Court approved the same and observed that on conferment of temporary status, the house rent allowance and city compensatory allowance shall be admissible.

5. The salient features of the aforesaid scheme are as follows. Vacancies in the Group 'D' cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules. In the case of illiterate casual labourers, the

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regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. Till regular Group 'D' vacancies are available to absorb all casual labourers, they would be conferred temporary status. Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts. Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947, on the ground of non-availability of work.

6. The applicants have based their claim for continuance in service as casual labourers as well as for their regularisation in accordance with the provisions of the aforesaid scheme even though they had been engaged after the cut-off date of 30.03.1985. According to them, there are enough vacancies in the various projects of an expanding nature to accommodate them in regular posts. As against this, the respondents have contended that the applicants have not been engaged as casual labourers against sanctioned posts and there are no vacancies in which they could be accommodated. According to them, those who have been engaged for specific work are liable to be disengaged on the completion of the work. The learned counsel for the respondents, Shri M.L. Verma argued that the applicants have not exhausted their remedies under the Industrial Disputes

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Act, 1947 before filing the application and that the application is barred by limitation. We have duly considered the case law relied upon by him*.

7. After considering the rival contentions, we are of the opinion that such of those applicants who have worked for 240 days as casual labourers are entitled to the benefit of the aforesaid scheme which is a comprehensive one, irrespective of their dates of initial engagement. For this purpose, the breaks in between disengagement and reengagement should be condoned in all fairness. We order accordingly. We are also not impressed by the contention raised by the respondents in some of the applications that the applicants left the job on their own and that this explains the reasons for the long breaks in between. We hold that that even casual labourers engaged on or after 30.03.1985 are entitled to the benefit of the said scheme. Therefore, they deserve

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* Case law relied upon by the learned counsel for the applicants.

1990(3) SLJ (CAT) 544; 1990(2) ATR 1; 1992(19) ATC 722; 1992(1) SLJ SC 201; AIR 1990 SC 10; 1992(2) SLJ (SC) 103; 1989(3) SLJ(CAT) 447; 1992(1) SCALE 954.

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to be considered for continued engagement as casual labourers and for eventual regularisation in accordance with the provisions of the said scheme. The decisions of the Supreme Court relied upon by the respondents in no way affect the applicability of the said scheme to the applicants before us.

8. In the light of the aforesaid discussion, we may examine the facts of each case and the reliefs to which the applicants are entitled to.

9. The applicant in OA 1305/1992 has worked as casual labourer in the office of the respondents. On 14.05.1992, the Tribunal passed an interim order directing the respondents to consider engaging the applicant as casual labourer if vacancy is available and in preference to his junior and outsiders.

10. The Respondents have not controverted the version of the applicant that he has worked for more than 240 days, though not continuously.

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11. In the light of the foregoing, the application is disposed of with the following orders and directions:-

- (1) We set aside and quash the Circular Letter dated 22.4.1987 and other similar instructions issued by the respondents for retrenchment of casual labourers engaged after 30.03.1985.
- (2) The respondents are directed to engage the applicant in the available vacancy, if any, and vacancy arising in the future, as casual labourer in preference to persons with lesser length of service and outsiders.
- (3) The respondents are restrained from engaging fresh recruits as casual labourers till the applicant has been regularised in suitable Group 'D' post in accordance with the scheme prepared by them, as mentioned above.
- (4) The case of the applicant for continuance in service as well as regularisation in appropriate post shall be considered in accordance with the provisions of the scheme prepared by them, as mentioned above. He would also be entitled to the benefit conferred by the said scheme.

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(5) The respondents shall comply with the above directions expeditiously and preferably within a period of four months from the date of receipt of this order.

(6) There will be no order as to costs.

B.N. Dholiyal
(B.N. DHOUDIYAL)
MEMBER(A)
18.11.1992

RKS
18.11.1992

P.K. KARTHA
(P.K. KARTHA)
VICE CHAIRMAN(J)
18.11.1992