

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(11)

OA No.151/92

Date of decision: 27th July, 92

Sh.Vinod Singh & anr. ..

Applicants

versus

Union of India & ors. ..

Respondents

CORAM: THE HON'BLE MR.T.S.OBEROI, MEMBER(J)
THE HON'BLE MR.P.C.JAIN, MEMBER(A)

For the Applicants ... Sh.J.P.Verghese, Counsel.

For the Respondents ... Sh.K.C.Mittal, Counsel.

1. Whether reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

JUDGEMENT

(DELIVERED BY HON'BLE MR.T.S.OBEROI, MEMBER)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for their regularisation in Group 'D' posts in Class-IV in the Department of Culture or in any other office under the Ministry of Human Resources & Development.

2. The brief facts of applicants' case are that they were engaged as daily wagers-cum-casual labourers in Group 'D', Class -IV posts after having been sponsored by the Employment Exchange, on requisition being sent by the respondents. They have relied upon the Office Memorandum dated 26.10.84 issued by the Department of Personnel & Administrative Reforms, according to which casual labourers, who have put in two years of service with 206 days during each year (in the offices observing five day week) may be considered for regular appointment to Group 'D' posts, if otherwise eligible.

(2)

The applicants claim to be entitled for regularisation as they have put in 206 days during each year for two years as required by the aforesaid OM and as there are vacancies available in the Group 'D' posts in the Department. They have also relied upon another Office Memorandum dated 8th April, 1991 in support of their claim, which lays down that the casual labourers recruited before 7.6.1988 and who were in service on the date of issue of the aforesaid instructions, may be considered for regular appointment in Group 'D' posts even if they were not recruited through Employment Exchange and had crossed the upper age-limit prescribed for the post, provided they are otherwise eligible for such regularisation. The applicants apprehend that their services may be terminated so as to accommodate other persons of the choice of respondents, thus attracting violation of Articles 14 & 16 of the Constitution. The have also cited an instance in ^{the office of the} /Director General of Archives, Government of India where one Shri Prabhu Prakash, though not completed requisite service, was regularised against a Group 'D' post.

2. When the OA came up for hearing on admission on 21.1.92, the respondents were directed not to dispense with the services of the applicants, if not already done, till 4.2.1992, which order continued thereafter till 24.3.92.

3. The respondents have filed their counter opposing the OA on the ground that the applicants were engaged

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on daily-wage-basis for some seasonal and non-recurring nature of work as and when necessity arose and not against any regular post. It is averred in the counter that the mere fact that their names have been obtained from the Employment Exchange, would not confer on them, any right of regularisation. The contention of the applicants that the respondents threaten them with dismissal is not proper as the word 'dismissal' goes with or signifies regular employment. The respondents have denied that there are any vacancies available in the department. As regards Office Memorandum dated 26.10.84, the respondents have stated that the same is clarificatory in nature and is related to casual labourers' employment against establishment posts, which can be regularised against available vacancies. So far as the Office Memorandum dated 8.4.91 is concerned, the respondents have stated that the same is not applicable to the case of the applicants as it relates to the casual labourers who were employed before 7.6.1988. Apart from the above, the learned counsel for the respondents argued that the submissions made in the rejoinder cannot be treated as part of the OA. He further contended that as no posts/vacancies are available, the question of regularisation does not arise.

4. We have heard the learned counsel for both the parties and have perused the two Office Memoranda,



copies of which have been placed by the applicants, on record. The applicants have based their claim for regularisation in the posts, in question, on their having worked for more than the required number of days, for two years; while the respondents have contested the applicants' claim, on the ground that they were engaged purely on seasonal and non-recurring nature of posts, and hence, they did not acquire any right of regularisation on the same. The respondents have also contended that the applicants' names were requisitioned from Employment Exchange each time, they were engaged on specific assignment, which ended with the completion of the respective job.

5. We have given our careful consideration to the rival contentions, in the light of the two Office Memoranda dated 26.10.84 and 8.4.91, relied upon by the applicants, and are of the opinion that in view of the nature of engagement given to the applicants, they did not acquire any right of regularisation on the same, the nature of the posts given to them being ^{of} essence. Further, in the absence of complete details of the instances stated to have been regularised ^{an} in/other department, no violation, to our mind, of Articles 14 & 16 of the Constitution of India, is involved. At best, in the facts and circumstances of the case, the applicants only deserve a direction, in their favour, that in the event of

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the availability of the vacancies, they may be considered for being engaged, as casual labourers, in preference to freshers or persons with lesser length of service. We order accordingly.

6. The application is disposed of on the above lines, with no order as to costs.

27/7/92
(P.C.JAIN)
MEMBER(A)

Seen
(T.S.OBEROI)
MEMBER(J)