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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.
Date of decision: 04.05.1993.

OA No. 2788/92

Shri Brahm Dev Yadav & ors. ... Petitioners
versus

Union of India through
Secretary,
Ministry of Agriculture & ors.... Respondents

OA No. 2869/92

Sh.Bhim Singh & ors. ... Petitioners
versus

Union of India through
Secretary,
Ministry of Agriculture & ors. ... Respondents

CORAM:-

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN (J)
THE HON'BLE MR.S.R.ADIGE, MEMBER (A)

For the Petitioners ... Sh.K.L.Bhatia, Counsel.

For the Respondents ... Sh.A.K.Sikri, Counsel.

JUDGEMENT(ORAL)
(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

The controversy raised in OA No.2788/92 and in OA No.2869/92 appears to be similar. They have been heard together and they are being disposed of by a common judgement.

2. In OA No.2788/92 on 29.10.92, the Tribunal directed notice to be issued to the respondents fixing 12.11.92. On 12.11.92, the respondents were granted four weeks' time to file their reply. In OA No.2869/92 on 6.11.92, notice was directed to be issued to the respondents, returnable for 20.11.92. On 20.11.92, the respondents were given four weeks' time to file their reply to this OA. On 22.3.93 counsel for the respondents prayed for and was granted one week's time to file reply to both the OAs. No counter-affidavit has been filed so far although in between the cases were listed on a number of occasions.

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3. Instead of filing the counter-affidavit, the respondents have filed MP No.1218/93 in OA No.2788/92 and MP No.1217/93 in OA No.2869/92 praying that these OAs may be dismissed as barred by res judicata. We are not able to understand the attitude of the respondents in not filing the reply. They have wasted the time of the Tribunal by taking time again and again and by not carrying out the order of the Tribunal.

3. We proceed to dispose of these cases finally.

4. In the absence of any counter-affidavit, the averments made in the OAs are accepted as correct. The principal averments are these. The petitioners have worked as casual labourers/ Baildars on daily wages in various units of Indian Agricultural Research Institute(I.A.R.I.) and the Indian Council of Agricultural Research(I.C.A.R.) under the Ministry of Agriculture. The petitioners have been performing duties of regular posts. The petitioners handled the work of perennial nature. However, they were given breaks in service which were unusual. The respondents have been adopting the policy of hire and fire. The petitioners are the members of the I.A.R.I Agriculture & Research Industrial Workers Union(Regd.). The Union in its representative capacity on behalf of its members preferred Civil Writ Petition No.2835/86 before the High Court of Delhi which was transferred to this Tribunal and registered as T-132/87. In the Writ Petition, the reliefs claimed, in main, were that a writ of mandamus or any other writ order or direction be issued to the respondents to regularise the services of petitioners 2 &3 and the members of petitioner No.1. Respondents should also be directed to pay back-wages to the members of the Union on the same basis as paid to the regular employees by following the principle of equal pay for equal work.

5. The Transferred Application, above-mentioned, was disposed of by this Tribunal on 5.8.92. This Tribunal in para 6 of the judgement observed that the petitioners before it could not claim reinstatement or regularisation. A casual worker, merely because he has completed 240 days of service cannot claim regularisation. Para 7 of the judgement is relevant and is extracted below:-

" In the circumstances it is not possible to accede to the request of the applicants that they should be reinstated with full back wages and should be regularised. The most that can be done for them is to direct the respondents to prepare a panel of workers who have worked in the past and when regular vacancies occur persons in the panel should be given weightage according to the total number of days served while considering them along with others in accordance with the provisions of the Employment Exchange Act or the relevant recruitment rules subject, of course, to the conditions of screening of the casual workers for adjudging their suitability and performance and medical fitness."

6. The respondents having not prepared the panel in accordance with the aforesaid directions of the Tribunal and having adopted the policy of hire and fire, the petitioners came to this Tribunal by means of instant OA. In main, the reliefs claimed in the OA are these:-

- (i) the respondents be directed to initiate action to prepare the panel of casual labourers/Baildars who had been working since 1981 for employment on regular basis.
- (ii) the respondents should be further directed that till such time the panel is prepared the applicants may be appointed on daily wage basis in the jobs for which the juniors and outsiders have been appointed.
- (iii) The respondents may also be directed to give salary to the applicants in the regular pay scale of Group 'D' employees.

7. In the Misc. Petitions filed on behalf of the respondents, the only point taken is that the present OAs are barred by the principle of res judicata as identical matter has been agitated and decided in TA 132/87. We are satisfied that the reliefs claimed

in the present OA are not the same as claimed in TA 132/87. In fact, in view of the reliefs claimed in the TA 132/87 and directions given therein, the respondents should have carried out those directions. The occasion of filing the present OA arose when the respondents did not carry out the directions given in TA 132/87 and failed to prepare a panel. Surely, the respondents cannot sit over the direction to prepare a panel and not give employment to those who are eligible to be appointed.

8. On 29.10.92 in OA No.2788/92, this Tribunal passed an interim order to the effect that the respondents should consider engaging the petitioners as casual labourers if vacancies exist and in preference to persons with lesser length of service and outsiders. Similar interim order was passed in OA No.2869/92 on 6.11.92. We feel that this was a just and fair order. We are inclined to make the interim order absolute and pass final order in terms of the same.

9. We direct the respondents to prepare the panel as expeditiously as possible. Till such time the panel is prepared, we direct the respondents to continue engaging the petitioners as casual labourers if vacancies exist and in preference to persons with lesser length of service and outsiders. We also direct that if the respondents take the work of regular employees from the petitioners, they shall be paid the same salary which is paid to the regular employees.

7. With these observations, both the OAs are decided finally with no order as to costs.

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(S.R. ADIGE)
MEMBER(A)

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(S.K. DHAON)
VICE-CHAIRMAN(J)

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