

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 496/93
T.A. No.

199

DATE OF DECISION 1-6-93

Ganesh Kumar & Others	Petitioner
Shri V.K.Rao	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
Shri M.L.Verma	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A).

The Hon'ble Mr. C.J.Roy, Member (J).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✗

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A)).

The three applicants are engaged as casual labourers by the Planning Commission who is the respondent, on daily wage basis. This application has been filed by them for the following directions:

- "i) To direct the respondents to regularise the services of the applicants with all the benefits of seniority etc.
- ii) To give directions to the respondents not to terminate the services of the applicants till their regularisation by preparing a scheme or otherwise."

2. The applicants' case, in brief, is as follows:-

2.1 The three applicants were engaged for the first time

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on 8.12.92, 4.11.92 and 4.11.92, respectively and were so engaged on the date on which this application was filed, namely, on 24.2.93. It is stated that they were nominated by the Employment Exchange and were selected by the respondent.

2.2 It is alleged that though the respondent is in need of Class IV employees, a requisition was made to the Employment Exchange only for the engagement of casual labourers.

2.3 It is stated that the applicants are paid wages at Rs.43.55 per day instead of proper pay scales and it is alleged that this is in violation of Article 14 and 16 of the Constitution of India.

2.4 The other important allegation is that the applicants are engaged verbally only for three months, though the respondent has work of a perennial nature for which "there are regular vacancies available." The respondents terminate such engagements after three months and engage fresh casual labourers thereafter, which is illegal.

2.5 The applicants admit that they have not made any written representation to the respondents to regularise their services for fear of termination of service.

2.6 It is in these circumstances that the application has been filed containing the prayers reproduced in para (1).

3. Notice on admission was issued to the respondents who have filed a reply opposing admission and denying that any relief is due to the applicants. The respondents' case is as follows:-

3.1 The applicants are only casual labourers engaged for doing work of a casual nature, according to requirements.

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3.2 They are paid daily wages on the basis of the rates fixed by the Delhi Administration for daily wagers.

3.3 The applicants were fully aware of the fact that they are not being engaged to be employed as Group 'D' employees on a regular basis, because the requisition was sent by the respondent to the "Muster Roll Employment Exchange, Kamla Market" where the names of the applicants are registered. It is stated that this Employment Exchange is concerned with registration of candidates for engagement as casual labourers only. If the applicants wanted regular employment to Group 'D' posts, they should have registered themselves in the regular Employment Exchanges and not in the Muster Roll Employment Exchange, Kamla Market. It is because of this special consideration that the registration cards issued to the applicants by the Exchange do not even contain their age, educational qualifications, etc which will be required for a proper selection. The nominees of the Muster Roll Employment Exchange are not screened, as ordinarily understood, but engaged only on the basis of their physical appearance after seeing 6 or 7 persons sponsored for engagement of one casual labourer.

3.4 There are standing instructions of the Department of Personnel regarding regularisation of casual labourers and on the basis of these instructions, the applicants have no such claim for regularisation. According to these instructions, a casual labourer will be eligible for consideration as a regular Group 'D' employee, provided he has rendered 204 days of service in each of two consecutive years, which is not fulfilled by the applicants.

3.5 The respondents also deny the existence of vacant

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group D posts.

3.6 For these reasons, it is contended that the application is devoid of merit and deserves to be dismissed.

4. The applicants have not filed any rejoinder.

5. When the case came up before us for consideration on admission, we heard the learned counsel for the applicants in great detail. In particular, it was put to him whether this was not a case where a representation should necessarily have been made in the first instance to the respondents seeking the reliefs now claimed. The learned counsel contended that in the light of the reply of the respondents such a representation, even if filed, would have been futile. He, therefore, requested that the O.A. be considered on merits.

6. He argued that a Bench of this Tribunal has held that the policy of 'hire and fire' evident in a batch of cases decided by them (Rameshwar and another Vs. Union of India-1992(1) ATJ Vol.II 417) was violative of the provisions of article 14 and 16 of the Constitution. In regard to regularisation he has relied on the judgements of the Supreme Court in State of Haryana & Others Vs. Piara Singh and Others JT 1992(5) SC 179.

7. He admits that one can reasonably argue that when there is no work, casual labourers are bound to be disengaged. But the position here is different. Work is still available and yet, the practice is to disengage one lot of casual labourers and entertain a fresh lot of casual labourers from the Employment Exchange. He points out that this has been specifically found to be illegal in the judgement of the Tribunal referred to above.

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8. He also contends that so long as the applicants are not regularised, the respondents cannot engage any others in their place who are also casual labourers and yet to be regularised as held in Piara Singh's case. In other words, if at all the respondent wants to take any action, it is open to him to replace the applicants by regularly selected employees but not by another set of casual employees. For the purpose of selection of such employees, the applicants should also be considered.

9. We have given our deep and anxious consideration to these contentions keeping in view the fact that a large number of casual labourers approach this Tribunal for similar relief. We notice from this application that the services of the applicants have neither been discontinued nor has any fresh lot of nominees of the Employment Exchange been appointed to replace the applicants after 90 days, notwithstanding the allegation that such is the practice. We notice that no interim order has been granted in this case which came up first on 24-2-93, ^{and} on the last date of hearing i.e. 23-4-93, all the three applicants have completed engagement of more than three months. This fact alone is sufficient to doubt the veracity of the averment made in para 4.8 of the application that the engagement is for three months only, after which newly recruited casual labourers are engaged. In the circumstances, the issue whether the respondent can replace one lot of casual labourers by another lot of casual labourers drawn from the Employment Exchange after every 90 days does not arise in this case. For the same reason, we do not wish to consider whether this question is no more res integra in view of this Tribunal's decision in Rameshwar Vs. Union of India 1992(1) ATJ Vol.12 - 417. Nevertheless, it has to be pointed out that in that judgement the

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question was not considered whether the practice cannot be justified on the ground that such rotation or periodical replacement is to ensure that the available casual work is got done by as large a number of persons as possible, ensuring for each a minimum of 90 days engagement, in furtherance of the principles of distributive justice, apparently because this point of view was not placed before the Bench for consideration. This issue is left to be considered in an appropriate case.

10. In so far as regularisation is concerned, we are of the view that the regularisation of casual labourers cannot be compared with the regularisation of temporary employees or ad hoc employees on regular posts. The existence of a post is a material point of difference. To fill up that post there are regular rules of recruitment. The Supreme Court has only held that persons who are not regularly recruited, but who have worked for long periods on regular posts, also have certain rights. Thus in Ranbir Singh's case (JT 1988(1) SC 31) relied on by the learned counsel, during arguments, what was laid down was that the service of an ad hoc lecturer i.e. a person appointed to a regular post, but on an ad hoc basis- cannot be terminated merely to deprive him of his vacation salary. It was held that the ad hoc employees should be continued till they are replaced by persons regularly selected by the Public Service Commission and that, in the meanwhile, they will be entitled to vacation salary.

11. The judgement in Piara Singh's case (supra) is more or less in similar terms. The Apex court has held that the exigencies of administration may call for an ad hoc or temporary appointment to be made. In such a situation, efforts should be made to replace such ad hoc/temporary employee by a regularly selected

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/as early as possible and the ad hoc/temporary employee may also compete in the process of selection. Therefore, it was held that the ad hoc or temporary employee should not be replaced by ad hoc or temporary employee, as this was necessary to avoid arbitrariness.

12. This principle applies to posts already existing and filled up in the above manner. This will not apply to the engagement of casual labourers for , by definition, casual labourers are engaged to do work which is of a casual nature, as distinct from work of a long term or perennial nature. Therefore, in theory, the question of regularisation of a casual labourer does not arise at all.

13. The ground situation may, however, be somewhat different. Government agencies may have been employing casual labourer on a casual short term basis for doing work which is really not of a casual nature, but is of a regular, long term duration, if not perennial. They may also be resorting to all kinds of methods to see that the persons engaged on a casual basis do not continue for too long and frustrate their claim, to a prescriptive right for continuous engagement followed by regularisation. It is in such situations that the Apex Court has intervened to protect the rights of the casual labourers. Even then, the Apex Court has not, to our knowledge, asked to Government to regularise them, but has only directed them to consider their regularisation or prepare a scheme for this purpose. The following judgements of the Supreme Court can be usefully seen in this connection.

- i) Inderpal Yadav Vs. UOI 1985 SCC (L&S) 526
- ii) Dhirendra Chamoli Vs. State of UP 1986 SCC (L&S) 187.
- iii) Surinder Singh Vs. E-in-C, CPWD 1986 SCC (L&S) 188.
- iv) Daily R.C. Labour P&T Deptt Vs. UOI. AIR 1987 SC 2342.
- v) Delhi Municipal Karamchari Ekta Union (Regd) Vs. PL Singh 1987 (2) SCALE 291.

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- vi) U.P Income Tax Department & Ors. Vs. UOI 1988(2)SLJ 38.
- vii) Dharwar Distt.PWD Literate Daily Wage Employees Vs. State of Karnataka (JT 1990(1) 343).

In only two of these cases (viz Inderpal Yadav's case and Dharwar District PWD Literate Daily Wage Employees cases) were specific directions given for absorption, in addition to directions for preparation of a scheme. That was due to the large numbers involved and the long numbers of years for which they were engaged as casual labourers- A typical order in other cases is the one passed in Dhirandra Chamoli's case- also known as the Nehru Yuvak Kendra case- The direction therein was as follows:-

"We therefore allow the writ petitions and make the rule absolute and direct the Central Govt. to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as Class IV employees, the same salary and conditions of service as are being received by Class IV employees, except regularisation, which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendras, so that these persons can be regularised. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which have been in existence for over 12 years. The salary and allowances of Class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed. The Government of India will pay to the petitioners costs of the writ petitions fixed at a lump sum of Rs.1000.

14. In one of the more recent decisions viz., in Piara Singh's case supra, this matter was considered and the following observations were made:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed

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by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour."

15. It has now to be pointed out that after an earlier judgement of the Supreme Court in Surinder Singh Vs. Engineering Chief, CPWD 1986 (S.C) case L&S 189, the Department of Personnel & Administrative Reforms issued an O.M. No.49014/2/86-Estt.C dated 7-6-1988 supplemented by O.M. of the Ministry of Labour dated 23-8-88. These memoranda specify the general terms and conditions for employment of casual labourers and can be found in chapter 21 of Swamy's Complete Manual of Establishment and Administration of Central Government Offices, IVth Edition 1983. It is necessary to recall these important instructions already issued by Government for these are generally overlooked. Relevant extracts from these O.Ms are reproduced below.

- "1) Persons on daily wages should not be recruited for work of regular nature.
- ii) Recruitment of daily wagers may be 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.
- iii) The work presently being done by regular staff should be reassessed by the Administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Department may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
- v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the State Government/ Union Territory Administration, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.

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- viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.
- ix) Where the work of more than one type is to be performed through out the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance
- x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age-limit for the relevant post.

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In other words, very detailed instructions already exist as to the circumstances in which casual labourers can be engaged and as to the circumstances when regular posts should be created for regularisation of casual labourers. Thus instructions already exist to carry out the directions contained in Piare Singh's case.

16. The applicants- or if the allegations made by them about replacement after 90 days is true, people who have preceded them in such engagement- may have a legitimate grievance that the respondent is engaging casual labourer contrary to the directions (i) & (ii) reproduced in the previous para. If so, we are firmly of the view that the applicants or any other group of persons who have a stake in the matter, should represent to the respondent, to take action as contemplated in these directions and create regular posts against which casual labourers- the present applicants or their predecessors- can be considered for regularisation in accordance with the various standing instructions/ e.g. the Joint Council Machinery- where these matters can be raised and considered. In our view, the O.M. dated 7-6-88 of the Deptt. of Personnel and the O.M. dated 23-8-88 of the Deptt. of Labour spell out a self

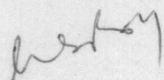
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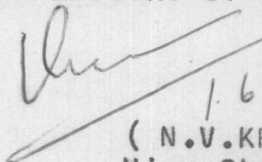
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contained scheme of general application for creation of regular posts to replace the casual engagement of persons which is the first pre-requisite for regularisation of casual labourer. There are already other instructions as to how the regularisation should be done. Therefore, persons who are aggrieved should first call upon the concerned Government agency to implement these directions of Government and exhaust the departmental remedy available to them before they approach the Tribunal.

17. A grievance has been raised that the applicants are paid only Rs. 43.55 per day and not the emoluments applicable to a regular group D post. The applicants have singularly failed to make out any case, whatsoever, that the duties they perform are the same as those performed by Class IV employees or that they had demanded parity in pay but not granted. The respondents have contended that the daily wage paid is based on daily wages fixed by the Delhi Administration. In the circumstances, we find that there is no material on record to give any relief to the applicants on this score.

18. For the foregoing reasons, we are of the view that this application is premature and this has to be dismissed. We do so. However, this will not stand in the way of the applicants from making any representation to the respondent seeking relief, if any, to which they may be entitled under the extant instructions of Government.


(C.J. ROY)
Member (J).
1-6-93


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(N.V. KRISHNAN)
Vice Chairman (A)
1-6-93