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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 26 OF 1996
CONNECTED WITH
ORIGINAL APPLICATION NO. 27 OF 1996

ORIGINAL APPLICATION NO. 28 OF 1996

ORIGINAL APPLICATION NO. 29 OF 1996

ORIGINAL APPLICATION NO. 30 OF 1996

ORIGINAL APPLICATION NO. 31 OF 1996

ALLAHABAD THIS THE 21st DAY OF AUGUST 2007.

Hon'ble Mr. Justice Khem Karan V.C.

Ram Murat Vishwakarma, son of Shri Jhange Vishwakarma, Resident of Village Asaintha, Post Gairwah, District Jaunpur.

.....Applicant (In O.A No.26/96

(By Advocate: Shri Anubhav Chandra

Vs.

1. Union of India through Chief Engineer, Lucknow (MES).
2. Commander Works Engineer, Allahabad.
3. Assistant Garrison Engineer, (Military Engineering Services), Varanasi.

.....Respondents in O.A. No.26/96.

(By Advocate: Sri Saurabh Srivastava)

ORIGINAL APPLICATION NO. 27 OF 1996

Ballan Ahmad, son of Shri Abdul Karim, Village Kalu Ka Pura, Post Fhulwaria, District Varanasi.

.....Applicant (In O.A No.27/96

(By Advocate: Shri Anubhav Chandra

Vs.

1. Union of India through Chief Engineer, Lucknow (MES).
2. Commander Works Engineer, Allahabad.
3. Assistant Garrison Engineer, (Military Engineering Services), Varanasi.

.....Respondents in O.A. No.27/96.

(By Advocate: Sri Saurabh Srivastava)

Original Application NO.28 of 1996

Ram Naresh son of Shri Kharwan, R/o Village Phulwaria, Post Phulwaria, District Varanasi.

.....Applicant (In O.A No.28/96

(By Advocate: Shri Anubhav Chandra

Vs.

1. Union of India through Chief Engineer, Lucknow (MES).
2. Commander Works Engineer, Allahabad.
3. Assistant Garrison Engineer, (Military Engineering Services), Varanasi.

.....Respondents in O.A. No.28/96.

(By Advocate: Sri Saurabh Srivastava)

Original Application No.29 of1996

Shubh Narain Sharma, son of Shri Ganga Prasad Sharma, Resident of Village Kamhariya, Post Padri Bazar, District Deoria.

.....Applicant (In O.A No.29/96

(By Advocate: Shri Anubhav Chandra

Vs.

1. Union of India through Chief Engineer, Lucknow (MES).
2. Commander Works Engineer, Allahabad.
3. Assistant Garrison Engineer, (Military Engineering Services), Varanasi.

.....Respondents in O.A. No.29/96.

(By Advocate: Sri Saurabh Srivastava)

Original Application NO. 30 of 1996.

Ram Sagar son of late Shri Chirkoot, R/o Village Parmandapur, Post Khajoi, District Varanasi.

.....Applicant (In O.A No.30/96

(By Advocate: Shri Anubhav Chandra

Vs.

1. Union of India through Chief Engineer, Lucknow (MES).
2. Commander Works Engineer, Allahabad.
3. Assistant Garrison Engineer, (Military Engineering Services), Varanasi.

.....Respondents in O.A. No.30/96.

(By Advocate: Sri Saurabh Srivastava)

Original Application No. 31 of 1996

Ram Dhari Ram, Son of Shri Sobri Ram, R/o Chakwara, P.O. Diha, District Azamgarh.

.....Applicant (In O.A No.31/96

(By Advocate: Shri Anubhav Chandra

Vs.

1. Union of India through Chief Engineer, Lucknow (MES).
2. Commander Works Engineer, Allahabad.
3. Assistant Garrison Engineer, (Military Engineering Services), Varanasi.

.....Respondents in O.A. No.31/96.

(By Advocate: Sri Saurabh Srivastava)

ORDER

All the abovementioned six O.As under section 19of Administrative Tribunals Act, 1985 arise in the same set of facts and circumstances, so are being disposed of together by this common order.

2. These applicants claim to have worked as Casual Carpenter/Black Smith/Mazdoor for some period in the office of Assistant Garrison Engineer (Military Engineering Service), Varanasi. Following table will reveal details of their working as such and total number of days and representations and reminders given by each of them.

O.A. No.	Name & Job	Date of engagement	Worked upto (with beak)	Total No. of days	Representation and Reminder.
O.A 26/96	Ram Murat Vishwakarma, Carpenter	01.08.83	24.11.84	267	20.11.94 10.10.95
O.A 27/96	Ballan Ahmad, Casual Labour	02.12.82	28.08.84	267	13.11.94 11.10.95
O.A. 28/96	Ram Naresh Carpenter	11.01.83	13.07.84	267	08.10.94 09.10.95
O.A 29/96	Shudh Narain Sharma, Black-smith	01.08.83	24.11.84	267	11.11.94 11.10.95
O.A. 30/96	Ram Sagar, Casual Mazdoor	07.09.81	28.10.83	327	20.11.94 11.10.95
O.A	Ram Dhani	07.09.81	30.10.83	275	15.02.93

31/90	Ram, Mazdoor	Casual				13.10.94 13.11.94

(Dates O.As in all the cases have been preferred on 01.01.1996.)

3. They say that since they worked for more than 240 days, so in view of Ministry of Home Affairs letter dated 26.7.1989 (Annexure A-4), letter of Chief Engineer, Lucknow Zone Lucknow (Annexure A-5), Memorandum dated 22.3.1982 issued by Ministry of Defence, they are entitled to be reengaged and regularized but inspite of various representations as mentioned in the table above, respondents have not cared to reengage and regularize them. They say earlier there was a ban on recruitment in Group 'D', so they did not move application for such reengagement or regularization but after ban was lifted, they started giving representation to the Authorities Concerned for re-inducting them. All six applicants pray that respondent No.2 and 3 be directed to consider their candidature for fresh recruitment in Group 'D', giving preference to them, in view of their working as Casual Workers. They also pray that respondents No.3 be asked to reengage them as Casual Hands/Mazdoors and regularize them, if they have inducted such Hands after they ceased to work as such.

4. The respondents contested the claim by filing written reply. Their first contention is that O.As are highly time barred as these persons are coming to the Tribunal, after about 20 years from the date they ceased to work as Casual Labourers. They say that Casual Workers are engaged as per requirement and as soon as the work is over, their services are dispensed with and such casual workers have no legal claim for reengagement or for regularization or for recruitment. It is stated that certain vacancies of Chawkidar and Mazdoor were released by Ministry of Defence, but due to interference of representatives and leaders of casual employees, these had to be surrendered. It is said that there is no vacancy now, so the question of reengaging or regularizing the applicants does not arise. The respondents have also tried to say that considering the long pending demand of such casual workers and pressure from various Ministries and Departments to frame one time measure for regularizing services of such casual workers, Ministry of Personnel, Grievance and Pension issued office memorandum No.49044/4/90-Estt. (C) dated 8.4.1991, providing for consideration the cases of casual workers recruited prior to 7.6.1988 and wherein services on issue of O.M dated 18.4.1991. They say, since the

applicants of all these six O.As were not working on 8.4.1991, so they were not entitled to the benefit of that scheme of regularization. As regards the model standing order referred to in the O.A., they say that MES being not an industry within the meaning of Industrial Disputes Act, 1947, the same will not apply to its employee. It is said that applicants are over age, so they are not eligible for direct recruitment in Group 'D'. It is denied in para 7 of the reply that any casual workers was engaged after1984 onwards. As according to them, there was a complete ban on such induction.

5. The applicants have filed rejoinder, reiterating that they were inducted as Casual Workers in Group 'D' after their names were sponsored by the respective Employment Exchanges and their termination was totally illegal.

6. All these six O.As were dismissed as time barred, vide order dated 17.7.2000. Review Petitions were also rejected vide order dated 20.9.2000. All the six applicants filed a joint Civil Misc. Writ Petition No.42696 of 2001, Ram Murat Vishwarkama Vs. Union of India and others before Hon'ble High Court of Judicature at Allahabad. The Hon'ble High Court allowed the writ petition vide its order dated 19.7.2006, holding that the O.As not barred by time and directing these be decided on merits as expeditiously as possible. This is how have O.As being come before the Tribunal again for decision.

7. I have heard Shri Anubhav Chandra appearing for the applicants and Shri Saraubh Srivastava appearing for the respondents and have also perused the entire material on records.

8. Shri Anubhav Chandra has submitted that in view of office memorandum dated 26.7.1989 (according to respondents, this letter is of 1969) issued by Govt. of India, Ministry of Home Affairs, Department of Personnel and A.R., applicants who worked as Casual employee for more than 240 days in a year, were entitled to be considered for regularization. He says according to this office memorandum, in suitable cases upper age-limit could have been relaxed. Shri Chandra has also submitted that according to model standing orders circulated vide Raksha Mantralaya memorandum dated 22.3.1982, copy of which is Annexure A-6, casual workman, who had completed six months of continuous service within the meaning of sub clause (b) of Clause (2) of Section 25 B of the Industrial Disputes Act, 1947 was to be brought to the regular strength and his pay fixed at the minimum of time scale and not only

this, a casual workman completing 90 days of continuous service in the same establishment or under the same employer was to be given preference for such casual employment in that establishment. Shri Chandra has also drawn the attention of Tribunal towards letter (Annexure A-4) issued by office of Chief Engineer Lucknow Zone, Lucknow whereby he asked the subordinate at Allahabad to forward a proposal for obtaining Govt. sanctioned for regularization of all left out casual personnel. He says that casual workers, inducted through employment exchanges, having put in more than 240 days of service, before being discharged or removed, were to be benefited by this scheme, referred to in the letter of Chief Engineer. Shri Chandra says that the cases of six applicants were not deall with accordingly and so they were deprived of their right to get their services regularized. Shri Chandra has attempted to have support from decision dated 13.12.1999 rendered by the Bench of Tribunal in O.A. NO.55/94, Brij Lal Yadav Vs. Union of India and Ors. where ex-casual workers of Military Engineering Service, who worked for more than 218 days in 1984 to 1986 had come for his reengagement. The Tribunal allowed the O.A. and directed the respondents to reconsider the case for reemployment. This decision was based on earlier decision dated 31.10.1991 in O.A. NO.694/1989. According to Shri Chandra fate of these O.As should not be different to the fate of O.A. 55/1994.

9. On the other hand, Shri Saurabh Srivastava, learned counsel for the respondents has vehemently argued that applicants are not entitled in law to claim their reengagement or regularization simply on the ground that they worked for a short spell of more than 240 days or so long back in early eighties. Shri Srivastava says that it is never the case of the applicants that their induction in Group 'D' in the year 1981-1983 was in accordance with relevant service Rules, so they have no case for reengagement or regularization. It is also stated by Shri Srivastava that in view of clarification dated 28.2.1991 (Annexure CA-1) issued by Engineer in Chief, provisions of Industrial Disputes Act, 1947 are not applicable to MES as its activity is not commercial, so model standing order relied on by applicants is irrelevant. He says that engagement of such casual workers is as per requirement and so ex-casual workers cannot force the department to engage them or to recruit, them.

10. I have considered the respective submissions. I may state very frankly that law on the subject has changed completely after a Constitution Bench decision of Apex Court in Secretary, State of Karnataka Vs. Uma Devi and

others, Judgment Today 2006 (4) Supreme Court page 420. The case of ex-casual workers, who ceased to work long back, say about 2 decades back, after having put in 240 days or 260 or 270 days, has become very-very wonk for claiming reengngement and regularization etc. The law so enunciated by the Apex Court is law of land under Article 141 of Constitution of India and is binding on all Courts and Tribunals and the Authorities. We cannot loose sight of such judicial pronouncement. After noticing a number of judicial pronouncements including Constitution Bench Decision in State of Punjab Vs. Jagdip Singh & ors. 1964 (4) SCR 128, Dharwad District P.W.D Literate Daily Wage Employees Association & Ors. Vs. State of Karnataka and Ors., JT 1990 (1) SC 343- 1990 (1) SCR page 544, Daily Rated Casual Labour Vs. Union of India & Ors. (JT 1987 (4) SC 164- 1988 (1) SCR 598 and famous case of State of Haryana Vs. Piara Singh and Others (JT 1992 (5) SC 179- (1992) 3 SCR page 826, their Lordships ruled in an equivocal terms that such persons, who were not inducted in accordance with relevant Rules/Executive Instructions have no claim for engagement or regularization. It would be profitable to reproduce some of relevant portions of said judgment and the same are as under:-

"38 *When a person enters a temporary employment or gets engagement as a contractual or casual workers and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Since a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in a concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.*

39. *It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more*

wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employees should be treated on a part with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be held to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are, therefore, overruled.

40. *It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and Courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is, therefore, not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the Court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.*

41. *It is argued that a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Consitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles*

14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

42. *The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39 (a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in Government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the numerous as against the few who are before the Court. The Directive principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.*

43. *Normally, what is sought for by such temporary employees when they approach the Court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the*

decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur V. The Governing Body of the Nalanda College. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. *One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra0, R.N. Nanjundappa (supra), and B.N Nagarajan (supra), and referrd to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred by and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or of tribunals and should further ensue that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.*

45 *It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents".*

11. The attention of Sri Chandra was drawn by me during the course of oral arguments, towards the Constitution Bench decision. He was of the view that the case of these applicants will not be covered by this decision but will be covered by office memorandum/letters referred to in the O.As. I have not been able to understand as to how these applicants can succeed, in the face of the aforesaid Constitution Bench decision. Those applicants, worked as Casual Workers for a very short spell. It is not the case that they put in more than 10 years or so, so as to claim benefit of directions given in para 44 of the said

Constitution Bench decision. It is true that the names of the applicants were sponsored by Employment Exchange but that alone will not make their induction regular one. Nothing has been said in the O.As as to what were relevant Rules, regulating such appointments and whether the same were followed. The case of the applicants throughout has been that they were casual workers and it is for this reason that they are claiming benefit of office memorandum/order of 1979 or benefit of letter of Chief Engineer or benefit of model standing order. It is for this reason that they are praying that respondents be directed to consider their fresh recruitment. They are not saying that discharge or termination or removal should be quashed because they were regular employee. So the nature of induction of the applicants in Group 'D' was casual by all means and was not in accordance with relevant rules. I am of the view that such a person, who was not inducted in service as per relevant Rules regulating the appointment, is not entitled to claim reengagement or regularization in absence of any such scheme of reengagement or regularization. According to the respondents, scheme of 1991 was one time measure and was applicable to the persons, who were working on the relevant date. The applicants had ceased to work in early eighties, so they were not covered by such scheme.

12. I am of the view that these Original Applications are devoid of merits and deserve to be dismissed. These are accordingly dismissed but with no order as to costs. Copies to be placed in all connected O.As.

Vice-Chairman

Manish/-