

A.F.R.

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 11 DAY OF SEPTEMBER, 2001

Original Application No.377 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Ram das (Scheduled caste), S/o
Shri Budh Sen, aged about 32 years
Village Dhampur Thakuran Pandey,
P.O.Mohanpur, district Bareilly(U.P.)

.... Applicant

(By Adv: shri R.C.Pathak)

ver [redacted]

1. Union of India, through the Secretary
Ministry of Agriculture, krishi
Bhawan, New Delhi.
2. The Secretary,
Indian Council of Agriculture
Research(ICAR), Krishi
Bhawan, new Delhi.
3. The Director General, Indian
Council of Agriculture Research
(ICAR), Krishi Bhawan,
New Delhi.
4. The Director,
Indian Veterinary Research
Institute(I.V.R.I), Izat Nagar
Bareilly(U.P.)
5. Shri S.R.Kashyap
Chief Administrative Officer,
Indian Veterinary Research
Institute(I.V.R.I.), Izat Nagar,
Bareilly.
6. Shri H.N.Pandey,
Farm Manager, farm section,
(I.V.R.I) Izat Nagar
Bareilly(U.P.)
7. Shri Ramu, S/o Shri Munshi Lal
Mazdoor, in the Engineering
Section, with temporary
Status in I.V.R.I, Izat Nagar,
Bareilly.
8. Shri Hori Lal, Mazdoor
I.V.R.I. Izat Nagar
Bareilly.

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9. Shri Suresh (Fresh Appointment)
Lab Attendant(Group 'D' Post)
I.V.R.I., Izat Nagar,
Bareilly.
10. Shri Akhtar Ali
Lab Attendant(Group 'D' post)
I.V.R.I, Izat Nagar, Bareilly.
11. Shri Naresh 'Temporary status'
on the post of Mazdoor, A.G.
Section, I.V.R.I., Izat Nagar,
Bareilly.

.... Respondents

(By Advs S/Shri J.N.Tewari/RakeshTewari)

O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI, V.C.

By this application u/s 19 of A.T.Act 1985 the applicant has prayed for various reliefs.

The first prayer is that the respondents may be directed to grant temporary status to the applicant, as he has completed 240 days in the calendar years since 23.4.1993 to 31.5.1995 i.e. 2 years and one month, with all consequential benefits as provided in the order/direction issued by I.C.A.R on 23.11.1994. He has also prayed that temporary status granted to the respondents 7 to 11 may be withdrawn as they are juniors to the applicant. The applicant has also prayed that the order dated 24.11.1995 may be directed to be withdrawn or cancelled and directions contained in the order passed in OA.No.1336/93 may be implemented as contained in order dated 27.4.1995 in OA No.387/93. He has also ^{also} prayed that agreements with Casual Workers Union entered into from time to time may be followed.

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The facts stated in the application for claiming the aforesaid reliefs are that he was engaged as casual mazdoor on 12.1.1988 at the Indian Veterinary Research Institute(IVRI), Izat Nagar, Bareilly. He was allowed to continue to work on the post in broken spells. However, as the respondents with malafide intention, though sometime engaged the applicant but used to appoint fresh casual mazdoor in his place and he was being deprived of legitimate right of regularisation, he filed OA No. 387/93 on 10.3.1993. The case was taken up by a Division Bench on 23.4.1993 and the following order was passed.

"Issue notice. C.A. to be filed within four weeks. R.A. to be filed within 2 weeks.

Since the applicant is still continuing work, he may not be disturbed as such.

List this case on 2.7.1993 for admission."

Counter affidavit was filed on 2.7.1993 and two weeks time was allowed to file RA. However, on 27.4.1995 the OA was disposed of finally by a Division Bench by the following order:

"The learned counsel for the applicant has filed RA. It may be kept on record. The learned counsel for the applicant urges that the applicant is covered by the Office Memorandum dated 13.10.1983 issued by the Ministry of Home Affairs Department of Personnel and Administrative Reforms, Govt. of India. The said Office Memorandum was referred and considered in judgement dated 15.12.1994 passed by a Division bench consisting of one of us(Hon'ble V.C.). In the

leading OA 1336/93 Munna Lal & Others
Vs. Union of India and Ors. Since the
O.M. has already been considered and in
paragraph 61 directions have been issued
to consider the regularisation on the basis
of the said O.M. This OA is, we have
accordingly satisfied, covered by the
decision rendered in OA 1336/93 and is
disposed of with the directions and
observations contained in the said
judgement."

As the O.A No.387/93 filed by the applicant was disposed
of with the observations and directions contained in order
dated 15.12.1994, it shall be proper to reproduce the
directions for better appreciation of the controversy in
the present case. The relevant paragraphs 61 to 65 are
being reproduced below:

61." In view of the discussion hereinabove,
we arrive at the following conclusions.

(i) That 'Model Standing Order', copy
of which is Annexure 55 to the leading
O.A, for the reasons indicated above
cannot be construed as a prescribed
Model Standing Order under the provisions
of the Industrial Employment Standing Orders
Act and the Rules framed thereunder: Thus
the claim for regularisation on the
basis of provision contained in Cl.15
thereof cannot be given effect to.

(ii) The respondents have proved to our satisfaction that the claim for regularisation can only be applied on the basis of the provisions of Office Memorandum dated 13.10.1983 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, copy of which is Annexure C.A. 1 to the Counter Affidavit filed on behalf of the I.V.R.I. The circular letter dated 29.3.1984 contained in Annexure C.A.2 will also govern the claim for regularisation of casual labourers, as the applicants.

(iii) The Scheme prepared by the Govt. of India, Department of Personnel and Training through O.M. dated 10.9.93 pursuant to the decision of the Principal Bench in the case of 'Raj Kamal and Ors Vs. Union of India and Ors has been noted by us. Since no claim for regularisation on the basis of the scheme formulated by the said Office Memorandum have been pleaded by the applicants and thus the stand of the opposite parties in respect to the applicability of the said Office Memorandum having not been made known, we are not inclined to direct the respondents to act in accordance with the said Office Memorandum. We leave it to the respondents to determine whether the said Office Memorandum is applicable to the applicants in these OAs depending on the question whether the same has been endorsed and sent to the Indian Council

of Agriculture Research for its implementation by the various Institutes under it. Our observations in paragraphs 45 and 46 of our judgment will govern this matter.

(iv) Keeping in view the fact that the applicants appointment was seasonal and casual nature and as such appointments automatically come to an end after the casual work for which they are engaged, we are of the opinion that it would not be proper to direct their regularisation even though they admittedly do not fulfil the eligible criteria for regularisation lay down in the Office Memorandum and circular letters filed in Annexure C.A-2 to the Counter Affidavit filed on behalf of the I.V.R.I.

(v) The argument about artificial break is misconceived in view of the nature of the appointment and duration of the appointment of the applicants. Ordinarily in cases of appointments of daily wage basis whether a break in service can be said to be artificial or not depends upon the facts and circumstances of each individual case and is required to be decided on the basis of evidence adduced and materials placed on record by the parties. Such questions of fact are not usually decided by the Tribunal

which exercisess its extra ordinary jurisdiction under Art. 226 of the Constitution of India.

62. This Tribunal only decides the OAs on the basis of pleadings and affidavits of the parties and not on the basis of the oral evidence adduced and cross-examination of the witness. The question of artificial break involves a question of fact which is not on the material on record capable of being adjudicated. The claim for 'Equal pay for equal work' has also not been substantiated.

63. The opp. parties have indicated that they are implementing the Office Memorandum and circular letters contained in Annexure CA-1 and CA-2. The position with regard to the Office Memorandum dated 10th September 1993 issued in pursuance of the Principal Bench in 'Raj Kamal Vs. Union of India and Ors., our observations in paragraphs 45 and 46 shall apply. However, if the said Office Memorandum has been endorsed to the Indian Council of Agriculture Research and they are required to follow the provisions of the said Office Memorandum, nothing in our order may be construed as preventing or obstructing the respondents from giving effect to the said Office Memorandum. For the present, we, are satisfied about the

stand of the respondents that they are required to follow and are following the guidelines contained in the Office Memorandum and circular letters filed as Annexures CA-1 and CA-2 to the Counter affidavit. We further hold that on the basis of the circumstance that none of the applicants qualify for regularisation under provisions of the said documents since they have not completed more than 240 days of continuous service in two consecutive years is not sufficient to hold that the provisions in the said documents is in any manner arbitrary or violative of Article 14 and 21 of the Constitution.

64. Such of the applicants whose services came to an end on completion of the work/project for which they have been engaged but by reason of the interim order they have been allowed to continue will have no right to continue. The interim order was subject to the decision of the O.A. and since the OAs are being dismissed, the interim order stands vacated.
65. The OAs are devoid of merit. The pleas raised on behalf of the applicants are not tenable, the OAs are accordingly dismissed with the observations made hereinabove. The parties shall bear their own costs. Copy of this common judgement shall be placed on the file of each of the OAs which have been clubbed

together and have been disposed of
by this common judgment.

It appears that after the order dated 27.4.1995 applicant alongwith several others made a representation on 26.6.1995 which was considered by respondent no.3, Director I.V.R.I. and was disposed of vide order dated 24.11.1995(Annexure A-2). This order says that the applicant does not satisfy the conditions and requirements for regularisation on the post according to the orders issued by the Govt. of India and the Council. It has been further stated that so far as the requisition sent to the Employment Exchange for forwarding the names for appointment on regular basis against Group 'D'posts, [^] All the persons who were serving on casual basis were given opportunity to give applications for appointment against Group 'D' posts and they were called for interview according to their eligibility and qualification. It is further said that it is not correct that order dated 15.12.1994 passed by the Tribunal has been violated. As the applicant has not been given relief he has again approached this Tribunal by filing the present O.A.

Counter affidavit has been filed by the respondents. We have heard Shri R.C.Pathak learned counsel appearing for the applicant and Shri Rakesh Tewari learned counsel appearing for the respondents, and also perused the original records of OAs No. 387/93 & 1336/93^y The learned counsel for the applicant has vehemently argued on the question of artificial breaks on which basis applicant could not complete 240 days in the years between 1988 to 1993. These artificial breaks are liable to be ignored as the applicant was illegally deprived of chance to work on the post and fresh hands were engaged against the directions contained in Govt. orders. Learned

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counsel has further submitted that in any case during the period 26.6.1993 to 31.5.1995 applicant completed 240 days in each year and he was entitled for temporary status which had been illegally denied to the applicant and he has been illegally terminated from the service. Learned counsel has also submitted that several persons including applicant were replaced by engaging fresh recruits and this was done with a malafide intention so that the casual labourers already engaged may not be regularised on the Group 'D' posts. It is further submitted that the disengagement of the applicant after he acquired temporary status is illegal as no notice of termination was served, the applicant is entitled to be reinstated with temporary status with all consequential benefits.

Shri Rakesh Tewari learned counsel for the respondents on the other hand, submitted that all the questions raised by the applicant claiming regularisation ignoring artificial breaks have already been taken into account by the Division Bench in OA 1336/93 and the claim was rejected. It is submitted that the OA No.387/93 filed by the applicant was also disposed of with the same directions and observations as contained in order dated 15.12.1994 passed in OA 1336/93 and the applicant is bound by the judgment and he cannot raise the same issue again. Learned counsel has further submitted that in Counter affidavit number of days on which applicant worked have been mentioned. In none of the years applicant completed 240 days, thus he was not entitled for temporary status. In this connection it has been further submitted that during the period 20.6.1993 to 31.5.1995 applicant worked under the strength of the interim order passed by this Tribunal, ^{and} applicant cannot claim benefit on the basis of

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the work done for 240 days during the period the interim order was ~~operative~~. It has been further submitted that applicant's claim has been rightly rejected by the order dated 24.11.1995. It is submitted that the applicant is not entitled for any relief.

The learned counsel for the respondents has relied on the following judgements.

- 1) (1998) 8 SCC-529 State of U.P. & Ors Vs. Raj Karan Singh
- 2) (1997) 4 SCC-582 Vishakhapatnam Port Trust Vs. Ram Bahadur Thakur Pvt. Ltd.
- 3) (1997) 2 SCC- 556 N.Mohan Vs. State of Kerala & Ors
- 4) (1997) 5 SCC-772 Kanoria Chemicals and Industries Ltd & Ors Vs. U.P.State Electricity Board & Ors.
- 5) 1992 Lab & I.C- 2252 Subhash Chandra Vs District Cane Officer Bijnor & Ors.
- 6) 1994 (69) F.L.R-290 Lakshmiraj Singh and another Vs. State of U.P. & Others
- 7) 1994 Supp. (2) SCC-745 U.P.State Co Operative Land Development Bank Ltd Vs Tajmulk Ansari & ors
- 8) 1994(68) F.L.R 1195 U.P.R.S.K.E.G.V Bank Vs. Labouy Court, Allahabad & Another.
- 9) 1998 Lab.& I.C. Raghavendra Sheshadri Rao Kulkarni
We have carefully considered the rival submissions made by the counsel for the parties. Learned counsel for the applicant laid much stress on the question of artificial breaks on account of which applicant could not complete 240 days during the year ~~was~~ required under the O.M. of Government of India dated 13.10.1983. He has quoted instances where the casual mazdoors already working were replaced by other persons. However, this question was considered in detail by the Division Bench in OA

1336/93 and the contention was rejected. In Sub para V of paragraph 61, the Division Bench concluded that the applicants are not entitled for any relief. It is not disputed that the order of the Division Bench has become final between the parties. Thus, the contention of the learned counsel for the ~~applicant~~^{"representant"} is justified that this question is not ~~opened~~^{"open"} for being reagitated by the applicant. The contention is accordingly rejected.

Now coming to the second question as to whether the applicant became entitled for temporary status on the basis of the services rendered by him and he has been illegally terminated from service, ^{it} has to be seen whether the applicant completed 240 days in any of the years he worked. In paragraph 6 of the counter affidavit respondents have mentioned the days during which the applicant worked in a particular year. For correct appreciation of the facts the relevant ^{portion} ~~portion~~ of paragraph 6 is being extracted below:

"..... The periods of engagement of the applicant in each of the years from 1988 to 1993 is given below.

1988	12.1.88 to 20.2.90	38 days
1990	19.3.90 to 27.4.90	60 days
	30.4.90 to 19.5.90	
	1.11.90 to 10.12.90	40 days
	13.12.90 to 31.12.90	18 days
		118 days
1991	1.1.91 to 21.1.91	21 days
	24.1.91 to 11.2.91	19 days
		40 days
1992	7.1.92 to 15.2.92	40 days
	18.2.92 to 28.3.92	40 days
	31.3.92 to 9.4.92	10 days
		90 days
1993	3.3.93 to 31.3.93	29 days
	1.4.93 to 30.4.93	27 days
	1.5.93 to 23.5.93	23 days
		79 days

The applicant was engaged from 20.6.1993 to 31.5.1995, as mazdoor on the basis of stay order granted the Administrative Tribunal. Therefore, the period of

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engagement without the stay of the court could not come to 240 days in a year, hence he is not eligible for granting temporary status/regularisation." There is no dispute between the parties about the periods of engagement of the applicant during the years mentioned above. However, the serious dispute raised by the respondents is that applicant is not legally entitled for the benefit of the services rendered by him during the period 20.6.1993 to 31.5.1995 as during this period he worked under the strength of the interim order passed by this Tribunal. Now the factual position as stated in paragraph 6 of the counter affidavit is that in 1993 applicant worked from 3.3.1993 to 31.3.1993 then from 1.4.1993 to 30.4.93, then from 1.5.93 to 23.5.93. Though the respondents ~~had~~ mentioned the days of work done by the applicant monthwise but from the aforesaid it is clear that applicant was continuously discharging the duties from 3.3.93 to 23.5.93. He had filed OA No.387/93 on 18.3.93. Thus on the date of filing ^{OA} applicant was already working on the post. The Division Bench considered the OA on 23.4.93 and after noticing the fact that the applicant is working on the post passed the interim order dated 23.4.93(mentioned above). The language of the interim order clearly suggests that the Division Bench after considering the fact that applicant is working allowed him to continue so that he may not be disturbed. It is not the fact that applicant was engaged a fresh on the basis of interim order. The interim order passed was that as applicant is still continuing he may not be disturbed as such. However, the language used in the interim order was not obligatory and it was open to the respondents to discontinue the applicant if work was not there. In the interim order word 'may' has been used by the Division Bench purposely ~~realising~~ ^{realising} that in case the

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work is not there, a casual labout may be required to be disengaged. From the facts stated the position which emerges is that applicant worked almost through out the year 1993 and the days ^{1 on which he} worked, are 274 days. He admittedly worked through out the year 1994 in which period he also must have completed more than 240 days. In 1995 it is stated that he worked upto 31.5.95 i.e. for 151 days.

The Division Bench while disposing of the OA No.387/93 only said that the OA shall be governed by the directions and observations made in the order dated 15.12.1994 passed in OA 1336/93. The Division bench in paragraph 64(quoted above) of the order only said that such of the applicants whose services came to an end on completion of the work/project for which they have been engaged but by reason of the interim order they have been allowed to continue will have no right to continue. The interim order was subject to the decision of the OA and since the OAs are being dismissed the interim order stands vacated. From the aforesaid observation it is clear that the Division bench only vacated the interim order and did not say anything about the consequences arising out of the services rendered by the applicant. The serious question thus to our consideration is as to whether the services rendered in such facts and circumstances may entitle the applicant for the temporary status or the services thus rendered should be ignored altogether.

Learned counsel for the respondents has relied on some judgments of Hon'ble Supreme court on this question. In case of State of U.P. & Ors Vs. Raj Karan Singh(Supra) the facts were that writ petition was filed before the High court to continue him on adhoc appointment till

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regular selection by Public Service Commission. Under the interim order applicant worked for more than a year. The High court while passing the final order directed to treat him as on regular basis and not to terminate without regular notice. The Hon'ble Supreme Court ^{on the post, under a} disapproved such course. The continuance ~~of~~ the interim order, in the same petition could not benefit the applicant for the purpose of regularisation. The relief granted was beyond the relief claimed. The Hon'ble Supreme Court observed as under:-

"The original prayer of the respondents was for issuance of a writ to allow him to continue till regular selection through the U.P.S.C is made. The impugned order of 26.10.94 therefore goes beyond the relief claimed by the respondents in the writ petition itself.

Besides merely because ^a a person continues under the interim orders of the court, such continuance on the post cannot and, in this case, does not confer on him any right for continuancy which does not enhance his case for regularisation. It is only an interim arrangement pending decision by the court and cannot disturb the position in law or equities as on the date of the petition."

The aforesaid judgement is thus, clearly distinguishable. The relief was granted on the basis of the continuance in the same petition under the interim order. In the present case, the position is entirely different as the applicant is claiming grant of temporary status on the basis of the services rendered by him in a fresh application.

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The second case relied on is 'Vishakhapatnam Post Trust and another Vs. Ram Bahadur Thakur Pvt. Ltd (Supra) we are unable to find out anything relevant for consideration in the present case.

In case of 'N. Mohanan Vs. State of Kerala and Others (Supra) the facts were entirely different. Appointment was made on the basis of the interim order though the selection list had already exhausted. On the basis of the continuance in service, ~~under~~ ^{only} interim order, ~~of~~ ^{as} regularisation was claimed which was disapproved by the Hon'ble Supreme court.

In case of Kanoria Chemical and Industries Ltd and Ors Vs. U.P. State Electricity Board and Ors (Supra) the facts are different. The question for consideration was ~~as~~ to whether the consumer-petitioners were liable to pay late payment/surcharge for the period the stay order had remained operative i.e. from issuance of the stay order till dismissal of the writ petition. Hon'ble court observed in paragraph 11 as under:-

"..... It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceedings and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court.

Any other view would result in the act or order of the court prejudicing a party, (Board in this case) for no fault of which and would also mean rewarding a writ petitioner inspite of its failure"

Thaking the aforesaid view the Hon'ble Supreme court held that the petitioners were liable to pay late fee/surcharge. In the facts of the present case no such position is involved. Earlier Division Bench while dismissing the application vacated the interim order without leaving any observation about the services rendered by the applicant allegedly under the interim order. In such circumstances, it is difficult to ignore the services rendered by the applicant in the present application. The facts of the present case clearly demonstrate that applicant from before the interim order was continuing from 3.3.1993 almost regularly. The interim order was passed on 23.4.93. the applicant continued according to respondents upto 23.5.93. Thereafter he was again engaged on 20.6.1993 i.e. after a gap of 18 days. In these circumstances, it is difficult to say that applicant was continued on the basis of the interim order. It has not been said in the counter affidavit that applicant was engaged against any particular project and the project was over. From the facts narrated in the counter affidavit itself it is clear that the respondents engaged and disengaged applicant according to their sweet will. Thus they have not been prejudiced in any way on account of the interim order passed earlier.

Another important aspect of this case is that in earlier application(OA 387/93) applicant had claimed regularisation on the basis of the services rendered by him for which he was not found entitled. The order regarding conferment of temporary status was issued on 10.9.1993. On the basis of the aforesaid O.M. Indian Council of Agriculture Research issued circular dated



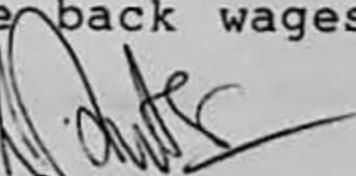
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23.11.1994 adopting D.O.P.T O.M.No.51016/2/90-Estt(c) dated 10.9.1993 and directing to grant temporary status to the casual labourers. In our opinion, the applicant was fully entitled for the grant of temporary status in view of the orders dated 10.9.1993 read with order dated 23.11.1994 the applicant was illegally denied this benefit.

Order dated 10.9.1993 also provided that despite conferment of temporary status the services of a casual labour may be dispensed with by giving one months notice in writing. However, in the present case the applicant was not terminated from service by giving any notice in writing. Thus the termination was illegal and applicant is entitled for relief. The cases relied on by the learned counsel for the respondents cannot be helpful in the present case as there is a specific requirement in the scheme provided vide order dated 10.9.1993.

At this place it may also be mentioned that the learned counsel for the applicant invited our attention towards the fact that applicant is serving in T.V.R.I Estate Farm Section under Contract system since 1.7.1995. Thus the applicant was engaged and was getting wages he cannot be entitled for backwages except for the continuity in service.

For the reasons stated above, this O.A. is allowed. The respondents are directed to reinstate the applicant as temporary status casual labour within a month from the date a copy of this order is filed. The applicant shall also be entitled for continuity in service and other benefits, except the back wages. There will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: Sept. 11, 2001