

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

O.A.No./T.A.No. 1231/97.

Date of decision 12<sup>th</sup> Nov, 98

Raj Kishore Balnicki Applicant(s)

C/A Shri Rakesh Verma Adv. COUNSEL for the  
Applicant(s)

Versus

Union of India & order. Respondent(s)

Shri N. B. Singh Adv. Counsel for the  
Respondent(s)

C O R A M

Hon'ble Mr. S. L. Jain V.C./Member(J)  
Hon'ble Mr. \_\_\_\_\_ Member ( )

1. Whether Reporters of local papers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not ? yes
3. Whether their Lordship wish to see the fair copy of the judgment ? no
4. Whether to be circulated to all Benches ? no

( SIGNATURE )

MANISH/

(6)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

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DATED THE 12TH DAY OF NOVEMBER 1998

CORAM: HON'BLE MR. S.L.JAIN, J.M.

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Original Application No.1231 of 1997

Raj Kishore Balmiki, aged about  
21 years, S/o Shri Chhabban Balmiki,  
R/o 95-B, Galla Bazar,  
Telierganj, District Allahabad.

..... Applicant

C/A Shri Rakesh Verma, Adv.

Versus

1. Union of India through the Secretary,  
Ministry of Environment and Forests,  
Botanical Survey of India,  
Office of the Director,  
D-8, Brabourne Road, Calcutta.

2. The Deputy Director,  
Botanical Survey of India,  
Central Circle,  
10 Chetham Lines,  
Allahabad.

..... Respondents

C/R Shri N.B.Singh, Advocate.

*Signature*

(7)

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act to issue a writ/order/direction in the nature of mandamus directing the respondent no.2 to grant temporary status to the applicant with all consequential benefits attached to it, to re-engage the applicant as casual labour with continuity of service as if he would not <sup>have been terminated in</sup> ~~be terminated~~ by oral order dated 21.11.97. and to consider a case of the applicant for regularisation in Group 'D' category, if found fit he may regularise.

2. The brief facts of the case are that the applicant was initially engaged as a casual labour with effect from Feb., 1991 till now without any interruption, till 28.11.97. On 22nd Nov., 1997 he was disengaged. The applicant was on the employment as casual labour on 1.9.93 and has rendered a continuous service of atleast one year, is entitled to a temporary status. The act of the respondent in disengaging the applicant frequently by giving artificial breaks violates the scheme. He represented the matter on 12.11.97 but his representation was not decided. Respondent no.2 deliberately and illegally with ulterior motive terminated the services of the applicant orally on 21.11.97. Hence this O.A. for the aforesaid reliefs.

3. The respondents denied the said fact and alleged that the applicant was not on employment on 1.9.93, he has not worked in any calendar year for 240 days or 206 days as required. The applicant has worked in the year 1995, 1996 and 1997 for 75, 70 and 58 days respectively, that too with breaks, which are not artificial one but he was engaged only when the work was available. Hence prayed for dismissal of O.A. with costs.

S.L.J.

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4. Department of Personnel and Training Casual Labour (Grant of temporary Status and Regularisation) Scheme of Govt. of India 1993 came in force with effect from 1.9.83. The scheme is applicable to casual labours in employment of the Ministry/Department of Government of India and they are attached as subordinate office but is not applicable to casual labours and Railways, Department of Tele-communication and Department of posts.

5. Para 4(1) of Scheme is as under:-

"Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.A. and who have rendered a continuous service of at least one year which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week."

6. By perusal of the said provision it is clear that conferring the temporary status of casual labour, he is satisfy the following conditions:-

- (1) He must be in employment on the date of issue of this O.M.
- (2) He must have rendered a continuous service of at least one year which means that he must have been engaged for a period of atleast 240 days (206 days in the case of offices observing 5 days week).

7. On perusal of Annexure A-1 it appears that the applicant has worked as contract labour from time to time.

8. The aforesaid discussion leads me to conclude that

J.S.M.

the applicant has not filed any document which suggests that he was in employment on 1.9.93 and he has worked for 240 days in one year as continuous service. These are the two requirements which the applicant has failed to establish in the present case. Hence he is not entitled to be conferred a temporary status as required by the aforesaid scheme.

9. The learned counsel for the respondent relied on the order passed by this Bench in O.A.No.1126/94 Tilak Raj v. Union of India and others, for the aforesaid proposition that these two requirements are to be fulfilled by the applicant before a temporary status is conferred on him. I do agree with the applicant's counsel in this respect.

10. The respondent's counsel relied on 1997 Supreme Court Cases (L & S) 902 State of U.P. and others v. Ajai Kumar for the proposition that there must exist a post and other administrative instructions or statutory Rules must be in operation to appoint a person to the post. I agree with the said proposition of law that either administrative instructions or administrative rules must be in operation to appoint the person to the post when there exists a post. In the present case, even if vacancy exists, no administrative instructions or Rules in operation to appoint the applicant.

11. The learned counsel for the respondents further relied on 1998 S.C. Cases (L & S) 122 Union of India and others v. Uma Maheshwari and others for the proposition that the claim by daily wager not sustainable if no regular work or no regularisation scheme in operation. The said proposition operates in the present case to the extent that though the scheme for conferring temporary status is in operation but the applicant is not entitled to avail the

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benefit of the said scheme as he is not covered by the said scheme and he was a <sup>Contract labour from time to time</sup> daily wager when the work was available only.

12. The respondents' counsel further relied on J.T.1996 (2) S.C. 455 State of Himachal Pradesh v. Suresh Kumar Verma and others for the proposition that the State is bound to follow the Rules of recruitment, appointment, on daily wages is not an appointment to the post according to the rules. I agree with the said proposition of law.

13. The applicant was engaged as casual labour on contract basis on the availability of the work and he is not entitled to be conferred a temporary status, or any relief sought by him.

14. In the result, O.A. is liable to be dismissed and is dismissed accordingly with no order as to cost.

*Acornis*

MEMBER (J)

G.C.