

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

original Application No. 1246 of 1998
this the 24th day of May 2004.

HON'BLE MR D.C. VERMA, VICE CHAIRMAN
HON'BLE MR. D.R. TIWARI, MEMBER(A)

Shyam Jee, S/o Sri Narottam Das, R/o 14/241-B, Sarai
Nandan, Khojanwa Bazar, Varanasi.

... Applicant.

By Advocate : Sri V.K. Srivastava.

Versus.

1. Govt. of India through its Secretary, Ministry of Textile, Weavers Service Centre, Weavers Colony, Bharat Nagar, Delhi.
2. zonal Development Commissioner, Handloom, New Delhi.
3. Regional Director, Weavers Service Centre, Bharat Nagar, New Delhi.
4. Director, Indian Institute of Handlooms Technology Chowkaghata, Varanasi.

By Advocate : Sri D.S. Shukla

... Respondents.

PER D.C. VERMA, VICE CHAIRMAN

The applicant, who was working as Lower Division Clerk (hereinafter referred to as L.D.C.) on adhoc basis, has claimed regularisation of his services. Subsequently, by order dated 18.12.1998 (Annexure-7B), the services of the applicant were terminated w.e.f. 31.12.1998. The termination order has also been challenged by bringing an amendment.

2. The facts, in brief, is that the applicant claims to have been appointed after interview on the post



of L.D.C. against clear permanent vacancy in April, 1994. The appointment was made by the competent authority. The applicant continued to work till 31.12.1998, but the services of the applicant has not been regularised. By order dated 25.9.1998, respondents appointed one Sri Santosh Kumar Yadav on probation period of two years even thereafter one post remained vacant, still the respondents have not regularised the services of the applicant.

3. Respondents' case is that one Sri A.K. Srivastava, who was working as L.D.C., was promoted on adhoc basis as Store keeper ~~on temporary basis~~ w.e.f. 22.4.1994. To fill up the post of L.D.C. on adhoc basis, the applicant was appointed. The applicant served till 31.12.1998 with breaks and not in continuity. The case of the applicant was referred to Headquarters to enable the department to draw the salary and dues of the applicant. The post of L.D.C. is to be filled up through Staff Selection Commission (hereinafter referred to as S.S.C.). The appointment of the applicant was not made through S.S.C. The applicant is, therefore, not entitled for regularisation unless he comes through S.S.C. With regard to appointment of Sri Santosh Kumar Yadav, it is stated that he has been appointed through S.S.C., hence he has been appointed to one of the posts of L.D.C. The applicant's appointment was last extended vide order dated 7.7.1998 (Annexure A-10) from 15.4.1998 to 31.12.1998 and before completion of that period, order dated 18.12.1998 was issued terminating the services of the applicant w.e.f. the afternoon of 31.12.1998.

4. Counsel for the parites have ~~been~~ heard at length. During the course of arguments, it is admitted that there is no scheme for regularisation of L.D.C. It is also admitted that the post of L.D.C. is, as per rules, required to be filled up through S.S.C. The learned counsel for the

applicant has, however, placed reliance on the decision of Madras Bench of the Tribunal dated 27.2.1992 given in O.A. no. 288 of 1990 in re. M.S. Vasantha Vs. Union of India & others. It has been submitted that in the cited case, the applicant, who was working as Junior Stenographer, worked for about 7 years and her services were dis-continued in the year 1990, which was challenged. The Tribunal directed the respondents to consider the regularisation of the applicant on the post occupied by her.

5. The learned counsel for the applicant has also placed reliance ~~on~~ ^{on} the decision in the case of Central Welfare Board & Others Vs. Anjali Bepari (Ms) & Others (1996 SCC (L&S) 1358 and also in the case of Union of India & others Vs. Mohal Pal (2002 SCC (L&S) 577) .

6. The learned counsel for the respondents has, on the other hand, submitted that as per appointment letter, initially issued to the applicant (Annexure A-2), dated 11.4.1994, the applicant's appointment was on adhoc and purely on temporary basis. It was also mentioned therein that the post has become vacant due to adhoc promotion of Sri A.K. Srivastava to the post of Store Keeper. The condition nos. 4 & 5 of the appointment letter is as below :

"4. The appointment is purely on adhoc basis for a short period of six months or till reversion of Sri A.K. Srivastava, Store Keeper (Adhoc), which ever is earlier.

5. The services of Adhoc appointment so made can also be terminated by the appointing authority within the period specified above at para 4 at any time without assigning any reason."

7. It is un-disputed that the applicant's appointment was, by various orders, continued upto 31.12.1998. The last order is Annexure A-10 dated 7.7.98 by which the period was extended upto 31.12.1998 wherein it was also mentioned that he will continue till the post is



filled-up on regular basis through S.S.C. , which ever is earlier. It was on completion of tenure upto 31.12.1998, the applicant's services were terminated. The respondents have also placed reliance on the decision of principal Bench in O.A. no. 1017 of 1998 in the case of Rakhi Kakkar vs. Union of India & ors. decided on 20.5.1998 and another decision of principal Bench in O.A. no. **1075 of 1998** in re. Manoj Kumar Dotania Vs. Union of India & ors. against which CWP 4693/98 filed before the Hon'ble High Court Delhi was dismissed on 19.9.2002.

8. It is not in dispute that the applicant was appointed on adhoc basis only. The mere thrust is on the length of period for which the applicant continued to work on adhoc basis without regularisation. The relief claimed, as stated above, is on the basis of a decision given in the year 1992. It is also submitted that the applicant was appointed after the selection and even if the appointment was not through the S.S.C., the services of the applicant can be regularised.

9. We have considered the submissions of the learned counsel and we have also considered the two decisions cited at the Bar. The first decision in the case of Anjali Bepari (Ms) (supra) would not provide any relief to the applicant. In the cited case, the apex court rejected the relief for regularisation. However, merely directed the respondents to engage the applicant in some other project and to affect the retrenchment only on'last come first go' basis. The relief claimed in the present O.A. is for regularisation, hence the decision cited by the applicant is not of any help to him.

10. The case of Mohan Pal (supra) is not relevant on the point. It was only in respect of cut off date provided in the casual labourer (Grant of temporary

status and regularisation) Scheme 1993. The apex court held that the scheme was only one time programme applicable to the casual labourers who were in employment on the date of commencement of this scheme and had also rendered continuous service for the prescribed period, As such the cited case is not applicable in the present set of facts. Admittedly, there is no scheme for regularisation, hence the decision of Mohan Pal is not relevant.

11. The relief provided in the case of Smt. M.S. Vasantha was because she had been appointed after competing the competitive examination and had been sufficient good record of service for a long time. Such stand has not been approved by the apex court in the case of Dr. Mrs. Chanchal Goyal vs. State of Rajasthan (2003 AIRSCW 1132) where Dr. Goyal was appointed on temporary basis and continued to work for 14 years. Thereafter she worked for further 14 years on the basis of an interim order. The post was to be filled-up through public Service Commission, hence the relief was not granted therein. The plea taken that even at the time of temporary appointment the applicant had to undergo the selection process, which was negatived by the apex court as rules provided otherwise. The apex court has held that such selection is really of no consequence. In the case in hand, though the applicant was selected after interview, but it was for appointment on adhoc basis only, hence that will not be sufficient to cover-up the provisions contained in the recruitment rules. In view of this, the applicant can not get any relief on the basis of the decision in the case of Smt. M.S. Vasantha.

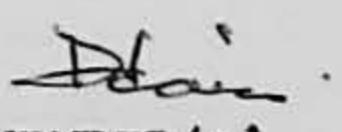
12. In the case of Manoj Kumar Dotania, the applicant was appointed as L.D.C. on adhoc basis and continued to work from 1988 to 1998, but his services were terminated. The challenge was rejected by the

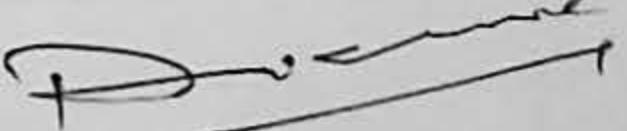
Principal Bench. The order of the Principal was upheld by the Hon'ble High Court, Delhi by observing as under :

"12. Regularisation, as is well known, is not a mode of recruitment. In the absence of any statute, statutory rules or the policy decision adopted in this behalf, it is trite no, person can ~~make~~ claim any right to be absorbed in the regular post despite a prolonged service. The petitioner, as noticed, hereinabove, having appeared at the qualifying examination, did not succeed therein and in that view of the matter, the petitioner could not have turned around and contended that his services are bound to be regularised de'hors the said policy decision."

13. In the case before this Bench, it is not known whether the applicant had actually appeared in the selection made by the SSC or what was the result. However, the principle as laid down above and in the case of Dr. (Mrs.) Chanchal Goyal (supra) would apply against the applicant's relief for regularisation. The appointment of the applicant was only 31.12.1998. The same was not allowed to continue. The termination order is valid and in consonance with the terms of appointment.

14. In view of the discussions made above, there is no merit in the O.A. The same is accordingly dismissed. Costs easy.


MEMBER (A)


VICE CHAIRMAN

GIRISH/-