

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

Original Application No. 1454 of 1998

this the 30th day of January 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

1. Brij Pal, S/o Sri Pyare Lal, aged about 28 years, R/o Village Chetgaotya, P.O. Chancheti, Bareilly.
2. Kailash Chandra, S/o Sri Kishan Lal, aged about 29 years, R/o Village Chancheti, P.O. Chancheti, Bareilly.
3. Mithalesh Kumar, S/o Sri Subadin, aged about 29 years, Village & post Chancheti, District Bareilly.

Applicants.

By Advocate : Sri R.C. Pathak.

Versus.

1. Union of India through Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. Adjustant General, Adjustant General's Branch, Army Headquarters, Rajaji Marg, New Delhi.
3. Dy. Director General, Military Farms, Block No. 3, R.K. Puram, New Delhi.
4. Director, Military Farm, Headquarters Central Command, Lucknow.
5. Officer-in-Charge, Military Farms, Bareilly Cantt.

Respondents.

By Advocate : Km. S. Srivastava.

ORDER (ORAL)

This O.A. has been filed by three applicants claiming the following relief(s) :



"(i) issue suitable order or direction to the respondent no.5 by way of Mandamus commanding the respondent no.5 to withdraw/quashed and set aside the illegal termination order dated 31.8.98 and 15.10.98 and applicants deemed in continuation in service as casual labourers with all consequential benefits including the granting of temporary status from 1.9.93 as their juniors have been given temporary status and their services be regularised on Group 'D' post Farm-man since their appointment as Casual labourer.

(ii) issue suitable order or direction to the respondent no.5 by way mandamus commanding respondent no.5 not to violate the policies of regularisation of casual labourers and grant of temporary status dated 7.6.88 and 10.9.93 issued by the Department of Personnel.

(iii) issue suitable order or direction to the respondent no.5 by way of mandamus commanding the respondent no.5 to permit/re-engaged the applicants to perform the Govt. official duties as the same were stopped by the respondent no.5.

(iv) issue suitable order or direction to the respondent no.5 by way of mandamus commanding the respondent no.5 cancelled the Tender/Contract of labour issued in the month of July 98 for the Farm work which were done by the aforesaid applicants.

(v) issue suitable order or direction to the respondent -t no.5 by way of mandamus commanding to respondent no. 5 to send the case of applicants for adjustment of the surplus staff vide policy 7576 SRO Army, the respondent no.2 i.e. Adjustant General Army Headquarter New Delhi for the adjustment of the applicant any part of India in Defence in any post including the lower posts as the same was done in other cases of Military Farm of Country.

(vi) issue suitable order or direction to the respondent no.5 by way of mandamus commanding to the respondent no.5 to re-engage the applicant as re-engage Sri Musrat Ali, casual labour as per direction of CAT (PB), New Delhi dated 18.11.1998.

(vii) ----

(viii) -----"

2. It is submitted by the applicants that they had been working as casual labourers with the respondents w.e.f. October'91, October'88 and July'88 respectively and continued to work till 1998 when they were retrenched. They have submitted that neither they were regularised on Group 'D' post , nor they were granted temporary status after completing 240 days in a calender year after 10.9.93 as per the policies of the Government of India issued on 7.6.88 and 10.9.93, (Annexure A-5). Therefore, they have submitted that the action of the respondents in terminating their services be quashed and set-aside. They have further submitted that the respondents issued a seniority list of 41 casual

labourers working from 7.6.88 to 31.12.92 wherein the applicants were placed at sl. nos. 28, 20 and 18 respectively (Annexure A-7) and in the seniority list issued on 31.12.95 they were placed at sl nos. 7, 3 & 2 respectively (Annexure A-8), which clearly show that juniors to the applicants were granted temporary status, while depriving the same to the applicants. The applicants' grievance is that even though they had completed 240 days in a calender year after ^{been} 1.9.93, but they have deprived the benefit of the scheme ^{an} issued on 10.9.93, which according to them is on-going scheme and they were entitled to ^{the B} grant of temporary status as well as regularisation. The applicants' counsel also submitted that the retrenchment order is bad in law and they be given the same order as were passed by the principal Bench in the case of Sri Musrat Ali and Chandigarh Bench in similar type of casual labourers of Military Farm (Annexure nos. 15 & 16).

3. The respondents have opposed the O.A. and have stated that due to reduction of work of casual nature, the services of the petitioners were not required, therefore, they were issued retrenchment notice/order dated 31.8.98 and 15.10.98 in view of Dy. Director General, Military Farm's letter dated 20.8.98. They have annexed the letter dated 20.8.98 as Annexure CA-1 to the Counter. They have further stated that the applicants did not fulfil the requirement for grant of temporary status in terms of Government of India, Ministry of Personnel, Department of Personnel & Training O.M. dated 10.9.93 and temporary status was granted only to those, who were eligible as per the said scheme. They have categorically stated in para 11 of the Counter that the petitioners did not complete 240 days in a calender year till the issuance of the Government order dated 10.9.93 which was one time provision for grant of temporary status, therefore, the contention of the petitioners that they have completed 240 days in a calender year after

10.9.93 does not come under the provision of Government order dated 10.9.93. They have also submitted that the respondents have filed an application for vacation of interim order passed by the Principal Bench in the case of Sri Musrat Ali and as far as the retrenchment orders are concerned, they have ^{been} passed in accordance with law since the work had reduced. They have relied on number of judgments passed by the Tribunal in similar circumstances in O.A. Nos. 969, 970 and 971 of 1998. The applicants' counsel on the other hand relied on ATJ 2002 (2) SC 215 and the latest O.M. dated 6.6.2002 which was handed over across ^{table} the ~~day~~.

4. I have heard both the counsel and perused the judgments as well.

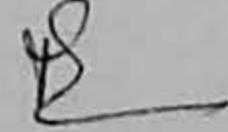
5. In the O.A., the applicants have specifically stated at different places that they had completed 240 days after 10.9.93, therefore, the mute question ^{which} requires to be considered in this case whether they would be entitled to the benefit of the O.M. dated 10.9.93 or not ? This very issue came-up for hearing before the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Mohan Pal etc. (2002 (2) ATJ 215). In this case the question ^{which} came up for consideration was "whether conferment of temporary status is a one time programme as per the scheme or ^{this} is ^{an} on going scheme to be followed by the department and whether the casual labourers are to be given temporary status as and when they complete 240 days of work in a year (206 days for the offices observing 5 days a week). After looking ^{at} the scheme especially clause 4 (i), the Hon'ble Supreme Court has observed that clause 4(i) of the scheme is very clear that conferment of temporary status is to be given to the casual labourers who were in employment as on the date of commencement of the scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240

days of work in a year or (206 days in case of offices observing 5 days a week) they were entitled to get temporary status ^{however} and the Hon'ble Supreme Court has held that clause 4 of the scheme does not envisages it as an ongoing scheme. Therefore, ultimately, after discussing everything, the Hon'ble Supreme Court held as under :

" -----we make it clear that the scheme of 1.9.93 is not an ongoing scheme and the temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of atleast one year i.e. atleast 240 days in a year or 206 days (in case of offices having 5 days a week) -----."

Therefore, this point should not detain me any longer as the issue has already been decided by the Hon'ble Supreme Court finally. It is not clear that temporary status could be conferred on casual labourers on fulfilling both the conditions namely that they should have been employed on the date of commencement of the scheme and they should have rendered continuous service of atleast one year i.e. atleast 240 days in a year. In the instant case, there is no averment made by the applicants in the entire O.A. that they had worked 240 days in a year prior to 10.9.93. On the contrary, there is ~~no~~ specific averment made by the applicants themselves that they had completed 240 days in a year after 10.9.93. Therefore, this case is fully covered by the judgment pronounced by the Hon'ble Supreme Court in the case of Mohan Pal (supra) and the respondents have rightly said that since they had not fulfilled the condition of having completed 240 days in a year as on 10.9.93, therefore, they could not be granted temporary status. If there were some other persons, who had joined after the applicants, but they had completed 240 days in a year as on 10.9.93, they would be entitled to grant of temporary status. The main grievance of the applicants in this case is that they were denied temporary status.

while their juniors were granted temporary status. Since it is already held that the applicants were rightly denied the grant of temporary status, no case has been made-out by the applicants for interference as far as this aspect is concerned. As far as the retrenchment of the applicants is concerned, that has been done in accordance with rules by giving the applicants one month's salary in lieu of notice and compensation of 15 days salary for each completed year with 240 days attendance. These orders have been passed as per rules and since the very first sentence says that casual employment is terminated due to reduction of work, I cannot force the respondents to re-engage the applicants even in the absence of work for them. In similar circumstances the Tribunal had already decided that it is open for the state to get the work done in any manner. It is clear that if the department was to do work departmentally then the claim of the applicant would certainly stand. However, in view of the changed policy to get the work done first mechanically and later on through the contractor as a result of which there are no vacancies for the applicant. Therefore, after giving removing them/necessary payments in view of notice as well as for the completed years of service in accordance with the circulars of the department cannot be said to be illegal. In all three O.A.s as mentioned above, the Tribunal has taken a similar view with regard to casual labourers working in the Military Farm, Pithoragarh. In those cases also, the applicants had been engaged on casual basis in May '89 and they were retrenched by the orders issued on 31.8.98. Since this Tribunal has already taken a view, I am bound by the view taken by the earlier Bench. Accordingly, I do not find any good ground to interfere in the matter. The O.A. is accordingly dismissed . NO costs.


MEMBER (J)