

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 20/5 day of May 2011

Original Application No. 562 of 2004

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

1. Phekoo, S/o Sri Sangram, Welder
2. Ram Bali, S/o Nanhoo, Aligner
3. Mangroo, S/o Sri Nanhoo Cheaper
4. Ram Dulare, S/o Sri Vishwanath, Looter
5. Raghu Raj, S/o Sri Gulaichi, Moulder
6. Shiv Moorat, S/o Sri Ramu Ram, Striker

All working under Senior Section Engineer (P.Way) (South) East Central Railway, Mughalsarai.

... Applicants

By Adv: Sri S. Ram

V E R S U S

1. Union of India through General Manager, East Central Railway, Hazipur.
2. Divisional Railway Manager, East Central Railway Mughalsarai.
3. Senior Divisional Engineer, East Central Railway, Mughalsarai.
4. Senior Section Engineer (P.Way)(South) East Central railway, Mughalsarai.

... Respondents

By Adv: Sri K.P. Singh

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Member (J)

The applicants joined as casual Gangman, were granted temporary status and later on their regularization as gangmen,

they were sent to Thermit Welding after passing the test and since then they are getting the salary of Group C post. However, no regularization has been effected in the said Group C post. Hence the applicants have prayed for the following relief(s):-

- "(i) *To issue a writ, order or direction in the nature of andamus directing the respondents to regularize the services of the applicants in the Thermit Welding Batch on the posts of Welder, Aligner, Cheaper, Looter, Moulder and Striker respectively (skilled categories) under the Rules.*
- (ii) *To issue a writ, order or direction in the nature of mandamus directing the respondents to promote the applicants in the next higher grade and posts.*
- (iii) *To issue any other writ, order or direction which is deemed fit and proper in the circumstances of the case."*

2. Respondents have in para 18 of the counter stated as under:-

"18. That the contents of paragraph 4.14 of the Original Application are not correct hence denied. In reply it is submitted that applicants are holding permanent post of Group 'D' but they are being utilized temporarily measures owing this they are being paid salary and other facilities of that post. There is no sanctioned permanent post of Thermit welding batch in this Unit."

3. In their rejoinder, the applicants contended that the very fact that the applicants were extracted work and paid the salary of a particular post would go to confirm that there is enough work. The applicants have relied upon the decision of the Apex Court in the case of **Bhagavati Prasad vs Delhi State Mineral State Corporation (1990) SCC L & S 174** and **State of Haryana vs Piara Singh**.

4. In so far as presumption that there is adequate work when an individual had worked for years on ad hoc basis etc., and thus he is entitled to regularization (as contended, referring to the decision in Bhagvati Prasad case (Supra) by the applicant), it is to be held that a similar observation was made by the Apex Court in the case of **State of Haryana vs Piara Singh**, but referring to the same the Apex court in the



Constitution Bench judgment in the case of State of Karnataka vs Uma devi (2006) 4 SCC 1 has held as under:-

"23. We may now consider State of Haryana v. Piara Singh. There, the Court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily-wagers or casual labour. This Court started by saying:

"21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service."

24. This Court then referred to some of the earlier decisions of this Court while stating:

"The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

25. This Court then concluded in paras 45 to 49: (SCC p. 152)

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49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its

eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularisation and making permanent, was not emphasised here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 49 of Piara Singh is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.”

5. With the above decision, we are of the view that we may not hold that there are vacancies and hence, the applicants should be absorbed against them. However, as and when such vacancies arise, the applicants would be regularized against such posts and the benefits available due to them shall be extended. Considering the fact that the rich experience of more than a score of years in the same trade with due salary for the said Group C posts respondents may, at the time of regularization consider at least 50% of the experience as regularized period, in case such a regularization is likely to afford any extra benefits, especially in respect of terminal benefits or pension.

6. With the above observation, the OA is disposed of. No cost.

 Member (A)

/pc/

 Member (J)